

Canada Energy Regulator

Onshore Pipeline Regulations Review

Phase 2: Topic Papers and Filing Manuals Review

Manitoba Métis Federation

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Executive Summary

This report provides an analysis of the Manitoba Métis Federation's (MMF) feedback on Phase 2 of the Onshore Pipeline Regulations (OPR) and Filing Manuals (FM) review that the Canada Energy Regulator (CER) is currently undertaking. This report is based on a review of 13 topic papers, provided by the CER on various aspects of the OPR and FM, as well as feedback heard during a Red River Métis Citizen Engagement Session held in February 2025. The main objective was to ensure that Red River Métis rights, claims, and interests are recognized and protected in the lifecycle oversight of pipeline projects within the National Homeland of the Red River Métis, and that this is reflected in the OPR and FM.

Based on the intersection of the topic papers review and Red River Métis concerns, priorities and recommendations, the MMF identified five key actionable recommendations for the CER to integrate into the development of the revised OPRs and FMs:

Enhance Transparency in the OPR Review Process: The CER must ensure that the Manitoba Métis Federation's (MMF) direct submissions, rather than the summary provided in the What We Heard Report, serve as the foundation for ongoing engagement and amendments to the OPR. Clear documentation and transparency in how MMF's concerns are integrated must be prioritized.

Ensure Emergency Management Protocols are Developed to Align with the Needs of Red River Métis: The OPR must mandate a distinctions-based approach to emergency preparedness that ensures MMF confirmation of culturally sensitive site identification and emergency response planning. Additionally, notification and communication obligations must extend beyond the pipeline right-of-way to include all areas potentially impacted.

Require Project Lifecycle Agreements: The OPR should mandate that regulated companies establish binding lifecycle agreements, covering participation in environmental monitoring, cultural heritage assessments, emergency response, and economic benefit-sharing, among other key areas.

Separate Crown Consultation from the CER to Ensure Transparency: The duty to consult must be carried out through an independent federal entity, rather than being housed within the CER. If the CER retains this role, it must demonstrate clear ethical walls and accountability measures to ensure impartiality in consultation.

Mandate Cumulative Effects and Socio-Economic Impact Assessments: The OPR should require proponents to integrate cumulative effects assessments and socio-economic effects assessments into project planning. This must include collaboration with the MMF, incorporation of Red River Métis Knowledge, and ongoing monitoring throughout the project lifecycle.

For the CER to maintain and fulfill its commitment to reconciliation, it must engage in a Nation-to-Nation collaborative relationship with the MMF to review and advance these recommendations, either through direct amendments to the OPR or changes to other aspects of the CER's regulatory framework, as



required. Undertaking this process in true partnership and good faith will be critical to ensure that the Red River Métis have a meaningful role in the development and implementation of a revised OPR, as well as the CER's regulatory framework and broader strategic plan.

The MMF expects the CER to integrate these recommendations into the OPR review to enhance meaningful engagement with the Red River Métis. The MMF also calls for enforcement mechanisms for compliance with these regulations, stressing the importance of establishing clear roles for both the CER and proponents in the consultation and accommodation process.



1.0 Introduction

1.1 Project Background

On August 28, 2019, the *Canadian Energy Regulator Act* (CER Act) came into force and transitioned the National Energy Board (NEB) to the Canada Energy Regulator (CER). As part of this regulatory regime change, the CER commenced efforts to revise its existing policy, guidance, and regulations to ensure conformity and alignment with the measures set out in the CER Act. In January 2022, as part of Phase 1 of this revision, the CER released its *Onshore Pipelines Regulations Review Discussion Paper* (the Discussion Paper). The Manitoba Métis Federation (MMF) provided feedback on the Discussion Paper in June 2022.

During this second phase of engagement, the CER is conducting a comprehensive review of the Onshore Pipeline Regulations (OPR) and the Filing Manuals (FM). The OPRs are the regulations that oversee onshore pipelines in Canada, and the Filing Manuals guide proponents on what to include in their project applications.

The feedback received on the OPR and FM will inform the CER's draft Regulatory proposal. Phase 3, 4 and 5 of this engagement will consist of reviewing the draft and final regulatory proposals before they are published in the Canada Gazette.

The MMF, in support of Phase 2 of the OPR review, has reviewed the 13 topic papers outlining areas of potential regulatory amendment, and conducted a Citizen engagement session to develop a list of concerns and recommendations related to the OPR review process.

1.2 Project Objectives

The Manitoba Métis Federation (MMF) has a responsibility to protect the rights, claims, interests, and values of the Red River Métis who expect there to be a balancing and respecting of environmental protection and stewardship with responsible economic and resource development. There are significant impacts on the National Homeland of the Red River Métis caused by the development and transportation of energy, including through CER-regulated facilities. It is important for the MMF, as the National Government of the Red River Métis to include perspectives on the oversight and regulation of these facilities and for these perspectives to be considered and actioned by Canada.

The objective of this report is to provide the CER with clear recommendations in addition to specific recommendations for each topic paper, including the CER's What We Heard Report from Phase 1 of engagement. The MMF wants to ensure that the OPRs and Filing Manuals reflect Red River Métis rights, claims, and interests. These recommendations are based on technical reviews as well as Red River Métis Citizen feedback to inform the CER and proponents on consultation and accommodation best practices related to pipeline regulations and project lifecycles.



2.0 Background—The Red River Métis and the MMF

2.1 The Red River Métis

The Red River Métis is an Indigenous collectivity and Aboriginal People within the meaning of section 35 of *the Constitution Act, 1982*. Based on our emergence as a distinct Indigenous People in the Northwest prior to effective control by Canada and the creation of the province of Manitoba, the Red River Métis holds rights, interests, and claims throughout and beyond the Province of Manitoba.

Since 1982, Métis rights have been recognized and affirmed by section 35 and protected by section 25 of *the Constitution Act, 1982*. These rights were further confirmed and explained by the Supreme Court of Canada ("SCC") in *R. v. Powley*, 2003 SCC 43. Manitoba Courts also have recognized Red River Métis rights in *R. v. Goodon*, 2008 MBPC 59. These decisions have affirmed that the Métis hold existing Aboriginal rights throughout their traditional territories. Our Citizens and harvesters rely on and use the lands, waters, and resources of our traditional territory throughout the Province of Manitoba and elsewhere within the historic Northwest, to exercise their constitutionally protected rights and to maintain their distinct Red River Métis customs, traditions, and culture.

2.2 Red River Métis' Rights, Claims, and Interests

Based on its emergence as a distinct Indigenous People in the Northwest prior to effective control by Canada and the creation of the province of Manitoba, the Red River Métis holds rights, claims, and interests throughout and beyond the Province of Manitoba consistent with the United Nations Declaration on the Rights of Indigenous Peoples, including the rights of self-determination and self-government.

The MMF is mandated to promote, protect, and advance the collectively held Aboriginal rights of the Red River Métis. Through this mandate, the MMF engages with governments, industry, and others about potential impacts of projects and activities on these rights. In 2007, the MMF Annual General Assembly adopted Resolution No. 8, which provides the framework for engagement, consultation, and accommodation with the Red River Métis. Designed by Métis, for Métis, Resolution No. 8 sets out the process that is to be followed by governments, industry, and other proponents when developing plans or projects that have the potential to impact the section 35 rights, claims, and interests of the Red River Métis. It was unanimously passed by MMF Citizens and mandates a "single-window" approach to consultation and engagement with the Red River Métis through the MMF Home Office.¹

¹ More information about Resolution No. 8 is available online at: <http://www.mmfmb.ca/docs/2013-Resolution%208%20Booklet-VFinal.pdf>



In engaging the MMF, on behalf of the Red River Métis, the Resolution No. 8 Framework calls for the implementation of five phases:

- Phase I: Notice and Response;
- Phase II: Research and Capacity;
- Phase III: Engagement and Consultation;
- Phase IV: Partnership and Accommodation; and
- Phase V: Implementation.

The OPRs have the potential to impact Red River Métis rights, claims, and interests and as such, engagement and consultation with the MMF, through the process set out above, must be followed. Federally regulated energy projects are located within the National Homeland of the Red River Métis. The “postage stamp province” of Manitoba was the birthplace of the Red River Métis. We currently have an outstanding claim flowing from the Federal Crown's failure to diligently implement the land grant provision of 1.4 million acres of land promised to the Red River Métis as a condition for bringing Manitoba into Confederation. It is set out in section 31 of the *Manitoba Act, 1870* and must be resolved in accordance with the honour of the Crown.

Red River Métis section 35 rights are distinct from First Nations’ rights and must be respected. The MMF is the National Government of the Red River Métis.

Prior to the creation of Manitoba, the Red River Métis had always exercised its inherent right of self-determination and developed its own self-government structures and institutions centered around the Red River Settlement and throughout the Northwest. As described by Louis Riel in his 1885 memoirs, Métis self-government was well-established and functioning when Canada came to the Red River Métis in the late 1800s:

When the Government of Canada presented itself at our doors it found us at peace. It found that the Métis people of the North-West could not only live well without it . . . but that it had a government of its own, free, peaceful, well-functioning, contributing to the work of civilization in a way that the Company from England could never have done without thousands of soldiers. It was a government with an organized constitution whose junction was more legitimate and worthy of respect, because it was exercised over a country that belonged to it.

Red River Métis self-government has evolved and changed over time to better meet the needs of the collectivity. Today, the MMF is the recognized, democratically elected, national government of the Red River Métis. On November 30, 2024 the Red River Métis and His Majesty the King signed the *Red River Métis Self-Government Recognition and Implementation Treaty*. The Treaty recognizes the Manitoba



Métis Federation as the government of the Red River Métis and various law-making jurisdictions consistent with the inherent right of self-government and the right to self-determination.

Since 1967, the MMF has been authorized by the Red River Métis through a democratic governance structure at the Local, Regional, and national levels. As part of this governance structure, the MMF maintains a Registry of Red River Métis Citizens.² By applying for Red River Métis Citizenship, individuals confirm that the MMF is their chosen and elected representative for the purposes clearly set out in its Constitution,³ including as related to the collective rights, claims, and interests of the Red River Métis.⁴

The MMF Constitution states that the MMF has been created to promote the political, social, cultural, and economic rights and interests of the Red River Métis. The MMF is authorized to represent the Red River Métis' collective rights, interests, and claims. This authorization is grounded in the MMF's democratic processes that ensures the MMF is responsible and accountable to the Red River Métis.

The MMF governance structure includes a centralized MMF President, Cabinet, Regions, and Locals. There are seven (7) Regions and approximately 135 Locals throughout Manitoba (**Error! Reference source not found.**). There are thousands of Citizens who live outside of Manitoba. All MMF Citizens are Members of a Local. Locals and Regions work together to authorize and support the MMF Cabinet, and the MMF's various departments and offices. Through elections held every four years, Citizens choose and elect the MMF Cabinet consisting of the MMF President, who is the leader and spokesperson for the MMF, a Vice-President of each Region, and two Regional Executive Officers from each Region. The MMF Cabinet also includes the spokeswoman from the Infinity Women Secretariat. Each Local's Membership elects a Chairperson, a Vice-Chairperson, a Secretary and a Treasurer (or a Secretary-Treasurer, as the case may be) to serve the Local for a four-year term.

Consistent with the direction of our Citizens back in 2014, MMF removed the arbitrary provincial borders from our Constitution that separated Red River Métis who live outside of Manitoba from those within. Today, the MMF represents Red River Métis Citizens within the provincial borders of Manitoba, and thousands more across our National Homeland, and around the world.

² MMF Constitution, Article III outlines the citizenship definition and application process. This definition ("Metis" is defined to mean "a person who self-identifies as Métis, is of historic Métis Nation Ancestry, is distinct from other Aboriginal Peoples and is accepted by the Métis Nation ") aligns with the definition of what constitutes a section 35 rights-bearing Metis community as outlined by the Supreme Court of Canada in *Powley* at para. 30.

³ *Newfoundland and Labrador v. Labrador Metis Nation*, 2007 NLCA 75 at para 47: "Anyone becoming a member of the [Labrador Metis Nation] should be deemed to know they were authorizing the LMN to deal on their behalf to pursue the objects of the LMN, including those set out in the preamble to its articles of association. This is sufficient authorization to entitle the LMN to bring the suit to enforce the duty to consult in the present case."

⁴ *Behn v. Moulton Contracting Ltd.*, 2013 SCC 26 at para 30: "[A]n Aboriginal group can authorize an individual or an organization to represent it for the purpose of asserting its s.35 rights."



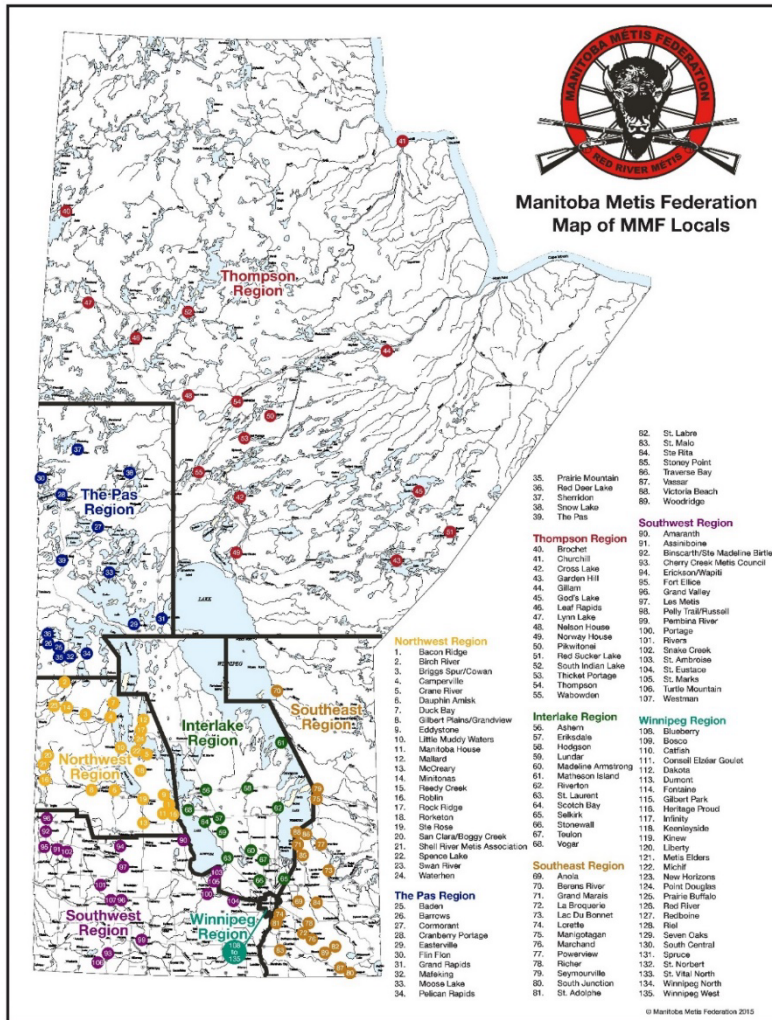


Figure 1. Manitoba Métis Federation (MMF) Regions.

Federation, has a membership of approximately 40,000, most of which reside in southwestern Manitoba.⁵ In 2010, the Manitoba Government adopted a Manitoba Métis Policy, and stated that:

The Manitoba Metis Federation is a political representative of Métis people in Manitoba and represents in Manitoba the Métis who collectively refer to themselves as the Métis Nation. ...

⁵ R. v. Goodon, 2008 MBPC 59 para 52. Note that the number of MMF Citizens (40,000) identified by the Court was as of 2007.



The MMF, as the duly authorized government of the Red River Métis, has been recognized by both the federal and provincial governments in agreements, policies, and legislation. For example, in 2002, *The Child and Family Services Authorities Act* recognized the MMF for the devolution of child and family services to MMF institutions. This Act establishes a series of Child and Family Services Authorities to administer and provide the delivery of services to various distinct Indigenous communities in Manitoba. It creates a Métis Child and Family Services Authority, the directors of which are appointed by the MMF.

In 2008, the courts in Manitoba further recognized that "[t]he Métis community today in Manitoba is a well organized and vibrant community. Evidence was presented that the governing body of Métis people in Manitoba, the Manitoba Métis

*Recognition of the Manitoba Métis Federation as the primary representative of the Métis people is an important part of formalizing relationships.*⁶

In 2012, the *MMF-Manitoba Harvesting Agreement (2012)* negotiated between the MMF and the Manitoba Government recognized some of the collective section 35 harvesting rights of the Red River Métis and relied on the Citizenship processes of the MMF as proof of belonging to a rights-holding Aboriginal community:

*For the purposes of these Points of Agreement, Manitoba will recognize as Métis Rights-Holders, individuals who are residents in Manitoba and who hold a valid MMF Harvesters Card, issued according to the MMF's Laws of the Hunt. [. . . and will] consult with the MMF prior to implementing any changes to the current regulatory regime that may infringe Métis Harvesting Rights.*⁷

In 2013, the SCC recognized the "collective claim for declaratory relief for the purposes of reconciliation between the descendants of the Métis people of the Red River Valley and Canada." It went on to grant the MMF standing as the "body representing the collective Métis interest" in the *MMF Case*.⁸ Additionally, in 2016, the *MMF-Canada Framework Agreement* stated:

the Supreme Court of Canada recognized that the claim of the Manitoba Métis Community was "not a series of claims for individual relief" but a "collective claim for declaratory relief for the purposes of reconciliation between the descendants of the Métis people of the Red River Valley and Canada" and went on to grant the MMF standing by concluding "[t]his collective claim merits allowing the body representing the collective Métis interest to come before the court.

*[and that] Canada is committed to working, on a nation-to-nation, government-to-government basis, with the Métis Nation, through bilateral negotiations with the MMF.*⁹

The MMF signed the *Manitoba Métis Self-Government Recognition and Implementation Agreement* (MMSGRIA) on July 6, 2021. This marked a major step forward in reconciliation between the Red River Métis and Canada. The MMSGRIA, among other things, immediately recognized the MMF as the National Government of the Red River Métis, and sets out a path forward towards the completion of a modern Treaty. As noted above, that Treaty was signed on November 30, 2024. Once Implementation Legislation

⁶ Manitoba Métis Policy, September 2010 at 4, 12, online (PDF): http://www.gov.mb.ca/imr/ir/major-initiatives/pubs/Metispolicy_en.pdf

⁷ *MMF-Manitoba Harvesting Points of Agreement* (September 29, 2012), ss. 3, 6-7.

⁸ *MMF Case*, *supra* note 6 at para 44.

⁹ *MMF-Canada Framework Agreement on Advancing Reconciliation*, November 15, 2016, Preamble.



is in place, the Treaty will become fully effective and will have constitutional protection, further strengthening the relationship between the Red River Métis and Canada.

3.0 Methodology and Scope

3.1 Topic Paper and Filing Manual Review

In Phase 2 of the engagement, the CER is seeking feedback on 13 topic papers related to the OPR and FM, and the *What We Heard Report* from the first phase of engagement that was completed in 2023. The Onshore Pipeline Regulations are the main guidelines that CER-regulated companies must follow to design, build, and operate a pipeline. The Filing Manuals explain what pipeline companies must include in an application for a potential project.

The MMF examined the following 13 topic papers:

- A. OPR - Damage Prevention
- B. OPR - Deactivation and End of Life Cycle
- C. OPR - Emergency Management
- D. OPR - Environmental Protection
- E. OPR - Human and Organizational Factors
- F. OPR - Management System and Contractor Management
- G. OPR - Pipeline Integrity
- H. OPR - Reporting Harm
- I. OPR - Rights and Interests of Indigenous Peoples, Socio-economic Effects and Engagement
- J. OPR - Safety
- K. Filing Manuals - Environmental and Socio-economic Assessment
- L. Filing Manuals - Lands
- M. Filing Manuals - Rights and Interests of Indigenous Peoples

The MMF reviewed all 13 papers but identified the following four priority topics: The Rights and Interests of Indigenous Peoples, Socio-economic Effects and Engagement, Environmental Protection, and Emergency Management.

All three Filing Manuals (FMs) were also given special attention, as they establish the terms and guidelines for proponents to engage meaningfully with the MMF and provide opportunities for the MMF and the Red River Métis to actively participate in pipeline projects. The findings in Section 4.0 and recommendations in Section 5.0 of this report focus on the above MMF priority topics.

Appendix A provides a summary of issues related to each topic, as well as specific comments and recommendations on how the objectives and regulatory requirements within the OPR can be improved



to ensure that Red River Métis rights, claims, and interests are adequately incorporated into the lifecycle regulation and oversight of CER-regulated facilities within the National Homeland of the Red River Métis.

3.2 Citizen Engagement

The MMF held a Citizen Engagement Session on February 5, 2025, in Winnipeg, MB. Red River Métis Citizens from all Regions and beyond Manitoba borders had the option to join the session in person or virtually. During the session, the MMF provided 84 Red River Métis Citizens with background and contextual information on the CER, OPRs, and the review process, the consultation and engagement processes, and an overview of the MMF's concerns and recommendations on the priority topic papers identified above in Section 3.1.

Citizens then formed several breakout groups, including one virtual group, to discuss OPRs and FM's and the impacts of pipeline projects on their rights, claims, and interests, with focus on traditional and current land use practices. The project team prepared discussion questions in advance, and each group included an MMF facilitator to take notes and highlight key takeaways.

Facilitators also provided Citizens with a handout summarizing key information and asked them to write down any concerns or impacts. The team then gathered feedback from the Engagement Session, and summarized it in this discussion paper.

4.0 Review Findings and Priority Concerns

This section highlights the key concerns and opportunities for the Red River Métis regarding federal pipeline regulations, federally regulated pipeline projects within the National Homeland, and engagement frameworks with the CER and proponents on matters under federal jurisdiction.

4.1 Transparency in the OPR Review Process

The OPR review process to date has not demonstrated transparency in considering or addressing the specific feedback provided by the MMF. While the MMF appreciates the function of the What We Heard Report to represent the CER's interpretation of themes in Phase 1 submissions provided by various parties, the report is not and should not be considered as a comprehensive representation of the MMF's position on the OPR and the OPR review process. The content of specific submissions provided by the MMF, not the What We Heard report, must be the basis of ongoing engagement and specific aspects of the CER's amendments to the OPR.



4.1.1 OPR Updates

A foundational issue in the current OPR, from the MMF's experience with regulated companies, is that the purpose and objective of the OPR is defined far too narrowly. Section 6 of the OPR currently reads: "The purpose of these Regulations is to require and enable a company to design, construct, operate or abandon a pipeline in a manner that ensures (a) the safety and security of persons; (b) the safety and security of pipelines and abandoned pipelines; and (c) the protection of property and the environment."

While the MMF is supportive of pipeline security and of the safety of employees and the public, there is no mention in the purpose of the OPR of the Red River Métis or requirements for regulated companies to conduct engagement, build relationships with the MMF or support the accommodation of Section 35 rights, claims, and interests. As a result, the OPR do not sufficiently compel regulated companies to uphold principles of partnership or reconciliation in their operations. How the OPR defines its own purpose in section 6 is critical, as it serves as the basis for the interpretation and application of the rest of the regulations.

The purpose of the OPR outlined in section 6 should be updated to reflect:

1. The mandate of the CER to "exercise its powers and perform its duties and functions in a manner that respects the Government of Canada's commitments with respect to the rights of the Indigenous peoples of Canada" (CER Act, Section 11);
2. The objective of the CER to "advance Reconciliation with Indigenous peoples in a manner that is consistent with the United Nations Declaration on the Rights of Indigenous Peoples" (Phase 1 Discussion Paper, p. 3);
3. The CER's commitment to "advancing the TRC (Truth and Reconciliation) Calls to Action," specifically "Calls to Action 43, 44 and 92 which call the government and business sector of Canada to adopt UNDRIP as a reconciliation framework and to apply its principles, norms and standards to policy and core operational activities involving Indigenous peoples and their lands and resources" (Phase 1 Discussion Paper, p. 3);
4. A commitment to regulate onshore pipelines in such a way as to require companies to work towards securing the support of the MMF as the MMF defines it for projects that may impact the National Homeland of the Red River Métis.

All sections in the OPR should be updated or replaced to reflect this updated purpose statement, including requirements for:

1. The meaningful integration of the Red River Métis knowledge in the design, construction, operation, and abandoning of a pipeline;



2. Mitigating impacts to the rights, claims, and interests of the Red River Métis;
3. Sharing benefits of projects with the Red River Métis;
4. The involvement of the Red River Métis in project ownership and decision-making, facilitated by lifecycle project agreements with the MMF.

4.2 Emergency Management

The provisions respecting Emergency Management fall short of meeting expectations to ensure that a project will be appropriately prepared for an emergency and that in the event of an emergency, the company will be able to respond effectively in a manner that promotes effective communication and effort to protect culturally sensitive or significant sites.

At the root of the issue is that direction provided by the OPRs is not targeted enough to allow for a distinctions-based approach ensuring the MMF is engaged in a way that meets the MMF's needs before, during, and after an emergency. As well, while there is a requirement to develop a baseline understanding of areas of cultural sensitivity or significance in preparing for an emergency, there is no requirement for the MMF to confirm that this information is accurate or complete. This allows proponents to generalize or develop emergency preparedness plans on incomplete or inaccurate information.

4.2.1 Geographic Relationship to the Pipeline Right of Way

The CER focuses much of its guidance on the geographic relationship a party has with the pipeline right of way, rather than a reasonable area of influence. The MMF notes three significant limitations in this guidance document, consistent with the 2019 Advice to the CER provided by the Line 3 IAMC:

1. Red River Métis Citizens' rights, claims, and interests, and heritage and cultural resources can be impacted outside of the pipeline right-of-way, particularly in the event of a migrating spill. Therefore, emergency notification should not be limited only to the right of way or other company property upon which CER-regulated pipelines and facilities are located, but should consider the extent of impacts in a worst-case emergency scenario.
2. In many situations, the National Homeland of the Red River Métis may not overlap with a pipeline right of way, and/or a proponent might not acknowledge or be aware of the exercise of Red River Métis Citizens' rights, but we still require the same notification and communication as First Nations overlapping a right of way in the event of an emergency.
3. The CER must ensure that their list and the proponent's list includes the MMF for all projects within or which may impact the National Homeland of the Red River Métis regardless of proximity to the right of way, and must not delegate responsibility to the proponent to develop their own list.



Given the Government of Canada’s responsibility to the constitutionally protected rights, claims, and interests of Red River Métis Citizens, the CER must confirm and validate with the MMF the nature of notification, communication, and involvement in emergency response that is required for all CER regulated projects.

The incorporation of “Industry Best Practices for Notifications to Indigenous Nations and Communities regarding CER-reportable Incidents,” published by the CER in 2022, is not sufficient. The OPR must include the requirements and provisions described in this comment for (1) notification to the MMF of an emergency, for all pipelines that intersect the National Homeland of the Red River Métis; and (2) the CER’s responsibility to give direction for the scope of notification, communication, and involvement of the MMF in emergency response.

Notification alone is not appropriate, as such notifications must align with communication protocols identified by the MMF.

4.2.2 Inclusion of MMF Resources in Required Training, Education, and Emergency Co-ordination

Currently section 35 of the OPR includes very clear explicit guidance on continuing education programs and emergency response involvement measures of nearby municipalities, fire departments, police, medical facilities, and members of the public residing nearby. However, there are currently no explicit requirements for the involvement of the MMF, MMF response services (e.g., environmental monitors), or MMF facilities and resources. As a result, it means that, while non-Indigenous responders and communities are being provided with the information and protocols necessary to effectively respond to emergencies, MMF response counterparts are being excluded, presenting a risk to Red River Métis Citizens who may be impacted should an accident, malfunction, or other project-related emergency occur.

The OPR must ensure that appropriate MMF staff, MMF response services (e.g., environmental monitors), and MMF facilities and resources are receiving the same information and training as non-Indigenous communities, services, facilities, and members of the public. Failure to do so poses a major safety risk to Red River Métis Citizens.

4.3 Project Lifecycle Agreements

A critical mechanism that the CER should use to support the participation of Red River Métis Citizens in pipeline projects is a requirement in the OPR for regulated companies to establish bilateral lifecycle relationship agreements with the MMF that outline the terms, conditions, and roles of the MMF and Red River Métis, including their role in oversight throughout the life of the project. These agreements should aim to provide frameworks for long-term relationships between the proponent and the MMF, that go beyond specific projects.



Requirements for lifecycle agreements with MMF for projects that may impact the National Homeland of the Red River Métis should be included in the OPR. Requirements for these agreements should include, but not be limited to, the following items:

1. Participation in cultural heritage and archaeological assessments
2. Participation in traditional land and resource use assessments
3. Participation in environmental monitoring
4. Participation in facility monitoring (e.g., pipeline or transmission line monitoring)
5. Identification and protection of species considered by Red River Métis to be at risk
6. Environmental, cultural heritage and socioeconomic mitigation and follow-on programs
7. Economic benefits – procurement, supply chain, other
8. Linear corridor restoration and maintenance with native species, with attention to vegetative species of importance to Indigenous communities or key wildlife species of importance to Indigenous communities
9. Review of project infrastructure enhancements and improvements that may be available to improve and provide capacity for regional infrastructure and services (e.g. oil pipeline pump stations require transmission reinforcement and/or additional regional power generation that can benefit rural/remote communities and regions; emergency management resources that can be deployed for emergencies beyond the regulated infrastructure)
10. Emergency and spill response capacity and resources, including training, equipment, and service contracts
11. Mutually agreed upon approaches to integrating Red River Métis Knowledge and land use
12. Regulatory compliance monitoring

4.4 Crown Consultation Requirements

The MMF believes that procedural fairness includes having appropriate processes and structures in place for ensuring the duty to consult and Crown consultation are carried out in an effective manner. However, since the transition from NEB to CER, the coordination of Crown consultation has shifted from Natural Resources Canada’s jurisdiction to being housed under the CER alongside its functions as both an assessor and lifecycle regulator. This triple role is very concerning to the MMF as the MMF believes that Crown consultation requires accountability by the CER and operators, and as such, should have a somewhat



impartial objective view. However, moving this function to the CER eliminates, or at least gives the perception that impartiality—objectivity, accountability, and commitment of good faith—has been limited.

To better support procedural fairness, good faith engagement, and contribute to Canada’s global competitiveness, there needs to be a demonstration that the duty to consult is carried out effectively, including through an accountable Crown consultation process separate from the regulator. As a result, at a minimum the CER needs to demonstrate how Crown consultation teams enforce and promote this objectivity and accountability. This includes but is not limited to, demonstration of how ethical walls are enacted within the CER to ensure this accountability is maintained. If such separations cannot be demonstrated, then the CER ought to consider delegating the responsibility of Crown consultation to another federal regulator or ministry such as the Impact Assessment Agency of Canada or Natural Resources Canada, or an Indigenous governing body, as enabled by section 77 and 78 of the *Canadian Energy Regulator Act*.

4.4.1 Scope of Consultation

A significant deficiency in the OPR and more broadly in the current regulatory regime related to proactive engagement and communication is the manner in which regulated companies are able to significantly repurpose, expand, or significantly reconfigure an existing pipeline system under the guise of piecemeal applications for maintenance or expansions to portions of a right-of-way over the course of a number of years. Significant caselaw exists that highlight the failures of this approach and further note that this approach fails the Crown’s duties regarding consultation.

The OPR should be updated to include specific requirements for a regulated company to be transparent about all plans for upcoming and future works on a pipeline system and how currently proposed works will interact with past and future applications. The CER must require this information to be included in project applications, and, where CER staff or intervenors identify substantive connections in terms of a company’s operational objectives for a pipeline system and potential environmental effects between separate applications, these applications should be combined and considered jointly. When applications are filed by a regulated company that could have been anticipated at the time of filing a previous related application but were not, the CER should be able to withdraw the approvals granted for the previous application and reconsider it jointly with the new application.

Further, the CER should eliminate the 40-km pipeline length for triggering environmental assessments and replace it with a consultative project screening and scoping approach that examines the real impacts of a proposed project and assumes that an environmental assessment will be triggered, unless it can be proven that impacts will be negligible and that Indigenous Nations consent to the project going forward without an environmental assessment. From the MMF’s perspective, tying the trigger for an environmental assessment to environmental impacts ensures that the process addresses significant adverse environmental and socio-economic impacts regardless of the length of pipeline proposed and will



eliminate project proponents piecemealing project pipeline lengths into segments under 40 km to avoid environmental assessment requirements.

4.5 Socio-economic Effects Assessment

The MMF is supportive of a proposal to add a new protection program related to anticipating, managing and mitigating socio-economic effects.

Consistent with Article 22 of UNDRIP, requirements for a socio-economic effects program must consider how individuals of diverse and intersecting identities, including Red River Métis women, youth, Elders, people with disabilities, or diverse gender or sexual identities are uniquely and disproportionately impacted by CER-regulated pipelines. It must also consider how to ensure those impacts are adequately addressed throughout the entire lifecycle of the project.

Additionally, the MMF recommends that the CER include the following requirements for proponents when conducting socio-economic effects assessments:

- Opportunities for the MMF to actively collaborate on the socio-economic effects assessment of a project that is susceptible to have impacts on the rights, claims, and interests of the Red River Métis;
- Identification of mutually agreed upon accommodation and compensation related to socio-economic effects on Red River Métis;
- Collaboration on monitoring and follow up of socio-economic effects throughout the project lifecycle.

4.6 Cumulative Effects Assessment

The Government of Canada has stated that it recognizes that cumulative effects is an important issue that requires vigilant attention, collaboration, and partnerships (Government of Canada Interim Message on Cumulative Effects, August 2022). The B.C. Supreme Court ruling in *Yahey v. British Columbia* further demonstrates that cumulative effects of the energy sector on the environment and Aboriginal and Treaty rights must be considered for the Crown to uphold its duty to consult and accommodate.

Revisions to the OPR must include requirements for the assessment, consideration, and management of cumulative effects in both project-specific environmental protection plans and company-wide environmental protection programs. Proponents must be required to demonstrate that sufficient engagement has occurred with the MMF. They must also demonstrate how Red River Métis Knowledge will be integrated in both the assessment of cumulative effects and measures to address cumulative



effects. Lastly, the MMF must be involved in baseline and threshold determination for cumulative effects assessment.

5.0 Citizen Engagement Feedback

Drawn from the feedback that the project team received during the Citizen Engagement Session, this section highlights the key concerns and priorities for Red River Métis Citizens regarding pipeline projects, development, and regulations on the National Homeland. It also outlines Citizens' recommendations for engagement best practices and accommodations measures.

5.1 Priorities and Concerns

5.1.1 Concerns Regarding Pipeline Activities

Red River Métis participants identified many concerns and risks regarding pipelines within the National Homeland during the session. These concerns relate mainly to impacts on Red River Métis land use and cultural heritage, impacts to the environment, wildlife and wildlife habitat, and emergency response. Specifically, Citizens are concerned about the following:

- Soil and water contamination
- Wildlife population decline and habitat fragmentation
- Pipeline spills and accidents, and detecting and reporting mechanisms for these accidents
- Cumulative effects of pipeline activities
- Loss of access to traditional harvesting areas, and contamination of these areas

Red River Métis rights, claims, interests, and culture are intrinsically tied to the land, and therefore pipeline activities, if carried out without the meaningful involvement of the MMF, can cause significant impacts on the Red River Métis way of life.

5.1.2 Priorities for Environmental Protection

Overall, Red River Métis Citizens emphasized the importance of a holistic approach to environmental protection that encompasses all aspects of the environment and recognizes Red River Métis land stewardship in ensuring a healthy environment for future generations. Participants also mentioned the importance of maintaining long-term ecosystem balance and health. Another priority is ensuring youth education and engagement on environmental protection.



Below is a non-comprehensive list of the environmental protection priorities mentioned by Citizens:

- Water source protection and water quality
- Wildlife reserves and habitats
- Fauna migration routes
- Trees and vegetation
- Medicinal plant and traditional harvesting areas
- Urban forests
- Preventing soil degradation
- Birds and bird habitat
- Air quality
- Climate change
- Ecosystem disruption
- Farmland
- Cultural and sacred lands
- Wetlands

5.2 Recommendations

5.2.1 Best Practices for Engagement

Citizens who attended the session raised priority concerns related to the need to establish long-term engagement and consultation strategies to ensure Red River Métis rights, claims, and interests are protected throughout the project lifecycle, as well as ensuring the MMF is involved in decision-making for pipeline projects.

Participants also made the following recommendations:

- Respect the Resolution No.8 Framework for engagement
- Ensure early engagement so that Red River Métis Citizens' concerns and recommendations are meaningfully integrated into the project
- The CER should provide capacity support for MMF engagement and honoraria throughout the regulatory and project lifecycle, from pre-planning to decommissioning
- Transparent communication and access to all relevant permits and documentation from the CER and project proponents throughout the project lifecycle

5.2.2 Emergency Response Planning

Citizens identified emergency response planning for pipeline activities as an MMF priority. Response planning was a key topic of the discussion during the Engagement Session. Most participants mentioned the importance of the MMF and Red River Métis being involved in every phase of emergency response,



from planning to monitoring and oversight. Participants put forward the following recommendations for the MMF's involvement and the CER and proponents' responsibilities in emergency response:

- The CER should ensure that the proponent completes a comprehensive risk assessment before approving any project
- Proponents should develop, in collaboration with the MMF, a transparent communication plan for all identified potential emergency risks. Citizens would like to be notified as soon as possible, and be regularly updated on emergencies and remediations
- Proponents should collaborate with the MMF to develop an emergency prevention and response plan

5.2.3 Accommodation

During the Engagement Session, Red River Métis Citizens discussed mitigation, and compensation measures they wish to see implemented concerning pipeline activities. Overall, financial compensation for impacts to rights and interests was deemed important, but Citizens stated that compensation should be integrated into a larger accommodation plan that includes ensuring MMF involvement in decision-making, providing education, awareness, training and employment opportunities for Red River Métis Citizens, and offsetting loss of access to Crown lands.

Specifically, Citizens made the following recommendations:

- Establish decision-making powers for the MMF and Red River Métis Citizens regarding pipeline activities and ensure the MMF is involved as early as possible and throughout the project lifecycle. Some Citizens mentioned the MMF should have the opportunity to re-examine the project if Red River Métis requirements are not met
- Establish a framework for Red River Métis-led impact assessments, co-assessments, and/or other meaningful Red River Métis participation in proponent assessments
- Provide capacity for Red River Métis-led knowledge studies, monitoring and, oversight
- Ensure compensation for long-term and cumulative effects of pipeline activities
- Provide individual and collective compensation for impacts of pipeline activities, including compensation for loss of access to traditional harvesting areas as well as support for community needs and infrastructures (e.g. community centres, schools, healthcare facilities, youth services)
- Ensure Red River Métis-specific training and employment opportunities



- Ensure compensation for the loss of wildlife habitat

6.0 Conclusions

The review of OPRs and Filing Manuals identifies the many opportunities for the CER and CER-regulated companies to meaningfully engage with the MMF and fulfill Canada's *United Nations Declaration on the Rights of Indigenous Peoples* commitments. Based on a comprehensive review of the 13 topic papers and feedback received from Citizens, the MMF encourages the CER to implement the recommendations outlined above as well as described in detail in Appendix 1 to meet these objectives, and minimize impacts while maximizing benefits on the rights, claims, and interests of the Red River Métis.

It is also important to note that though these recommendations concern both the CER and CER-regulated companies, the CER is accountable for enforcing any duties delegated to proponents related to consulting and accommodating. The roles and responsibilities of both parties must be clearly determined and communicated with the MMF in the early stages of engagement and consultation. The MMF would also like to see enforcement mechanisms developed for the Onshore Pipeline Regulations and Filing Manuals.



Appendix 1

Comments and Recommendations Tracking Table

Comment #	Document and Section Reference	Applicable Topic Paper Question	Issue/Comment	Recommendation
What We Heard Report				
1	What We Heard Report – General Comment	n/a	<p>The overview of the Discussion Paper released during Phase 1 indicated that the Discussion Paper would include a summary of “lessons learned,” described as “what we have learned over the past 20 years using the Onshore Pipeline Regulations, including areas where we know improvement is needed.”</p> <p>In the MMF’s Phase 1 submission, the MMF identified that the Discussion Paper itself did not actually include a summary of this nature, and the section entitled “Lessons Learned” only included a description of the current function of the OPR and a statement that the CER is seeking feedback on the OPR and its implementation. In our Phase 1 submission, we requested that the CER publish a summary of lessons learned as described in the overview of the Discussion Paper during Phase 2 alongside the “What We Heard” report. We were disappointed to find that the CER did not consider this request and include such a summary in Phase 2 materials, only making a passing reference in the “What We Heard” report to “what we have learned from years of implementing the OPR” (p. 3).</p>	The MMF expects that as the OPR process progresses in Phase 3, the CER will make efforts to transparently document and describe how the MMF’s comments and recommendations were received, considered, and incorporated into the formation of the OPR Regulatory Proposal.
2	What We Heard Report – General Comment	n/a	The “What We Heard” Report states, “the CER is following the requirements of the Cabinet Directive on Regulation in reviewing the OPR” and that “the review is also guided by the CER’s commitment to advancing Reconciliation with Indigenous Peoples, as well as the CER’s commitments and obligations respecting the implementation of the United Nations Declaration on the Rights of Indigenous Peoples (UN Declaration).”	While the MMF appreciates the opportunities and funding provided by the CER to review the discussion and topic papers provided to date in Phase 1 and 2, in order to fulfill the commitment for the review to advance reconciliation with Indigenous Peoples, and the CER’s commitments and obligations respecting the implementation of the United Nations Declaration on the Rights of Indigenous Peoples (UN Declaration), it is paramount that the CER develop a comprehensive bilateral agreement with the MMF that outlines an engagement plan, communication protocols, funding, and an approach to issue/recommendation disposition and dispute



				resolution to inform specific aspects of the CER's amendments to the OPR that the CER has outlined will be upcoming in Phase 3, Phase 4, and Phase 5. Such an agreement will ensure that consultation and engagement in the OPR review process reflects the MMF Resolution No. 8 Framework in addition to the Government of Canada's Cabinet Directive on Regulation, is consistent with the type of Nation-to-Nation relationship represented in the United Nations Declaration on the Rights of Indigenous Peoples, and clearly establishes a mechanism for the Red River Métis to provide feedback and support for the CER's revisions to the OPR.
3	What We Heard Report	n/a	<p>The What We Heard Report outlines "common themes" of feedback provided in submissions during Phase 1 engagement, which include:</p> <p>(1) Advance reconciliation and implement the UN Declaration, (2) Increase Indigenous involvement and incorporate Indigenous Knowledge in lifecycle oversight, (3) Improve clarity and transparency, (4) Enhance competitiveness and (5) Update guidance and improve how the OPR is implemented.</p> <p>The MMF notes that these themes do not fully represent the contents of the MMF's submission during Phase 1. While the role and function of the "What We Heard" Report in terms of how it will inform future phases of engagement and specific aspects of the CER's amendments to the OPR is not totally clear. We are concerned about the integrity of this process given that this report, rather than the content of specific submissions provided by the MMF, seems to be the basis of the scope of Topic Papers released in Phase 2 engagement.</p>	While the MMF appreciates the function of the What We Heard Report to represent the CER's interpretation of themes in Phase 1 submissions provided by various parties, the report is not and should not be considered as a comprehensive representation of the MMF's position on the OPR and the OPR review process. The content of specific submissions provided by the MMF, not the What We Heard report, must be the basis of ongoing engagement and specific aspects of the CER's amendments to the OPR.
A. Damage Prevention Topic Paper				
4	Damage Prevention Topic Paper – General Comment	A1, A5	<p>The subject of this topic paper is focused on providing clarity for depth of cover requirements in locations where onshore pipelines interact with agricultural activity, including requirements for surveillance and monitoring activities that assess compliance with depth of cover requirements.</p> <p>Assessing depth of cover can often involve soil disturbance, and therefore the involvement of Red River Métis Citizens and/or the MMF in such monitoring and assessment is important to ensure the integrity of cultural heritage and archaeological resources is retained. In such monitoring activity, or related operational activities such as integrity digs, companies and contractors often wrongly assume that pre-disturbed soils do not contain cultural</p>	As for all other instances where monitoring is required in the OPR, for all projects that impact the National Homeland of the Red River Métis, any requirements related to depth of cover monitoring and surveillance must include requirements for the involvement of MMF monitors.



			heritage and archaeological resources, which is not always the case.	
B. Deactivation and end of lifecycle Topic Paper				
5	Deactivation and End of Lifecycle, Subtopic 2: Decommissioning	B2	As currently written, section 45.1 of the OPR doesn't require a regulated company to outline approaches to decommissioning a pipeline until the end of a project's lifecycle. Regulated companies should be required to clearly set out their approach for pipeline decommissioning before a project's initial approval, construction, and operation so that the potential impacts of the entire project lifecycle are understood and considered at the outset of a project.	Section 45.1 of the OPR must require that a company submit decommissioning plans within the application for a project's initial approval, prior to construction and operation. Additionally, section 45.1 of the OPR must include stronger enforcement mechanisms related to pipeline decommissioning and monitoring.
6	Deactivation and End of Lifecycle, Subtopic 2: Decommissioning	B2, B7, B8	As currently written, section 45.1 of the OPR doesn't include any requirements for consultation and engagement with the Red River Métis in the development of an application for decommissioning or the selection of an approach to decommissioning. While decommissioning efforts are intended to reduce the overall environmental liability of a pipeline, such an undertaking is not without impacts. There is a need for stronger requirements in the OPR for the inclusion and application of Red River Métis Knowledge and TLRU information throughout the lifecycle of a project, including decommissioning, and not only during a project's planning, impact assessment, and construction.	Section 45.1 of the OPR must explicitly require consultation with Red River Métis for that impact the National Homeland of the Red River Métis, in the selection of an approach to decommissioning or abandonment, and full inclusion of Red River Métis Knowledge and land use information in the development of environmental monitoring and protection plans related to decommissioning or abandonment. Section 45.1 of the OPR must also include express requirements for the involvement of the MMF in the surveillance and monitoring of decommissioned and abandoned pipelines, and clearly outline the role of the MMF as the National Government of the Red River Métis as appropriate, in the compliance and enforcement of commitments and conditions related to the approval of decommissioning applications.
7	Deactivation and End of Lifecycle, General Comment	B3, B4	The MMF is supportive of the proposal of the topic paper to add requirements to section 6.5 of the OPR for companies to establish, implement, and maintain a management system for decommissioned and abandoned pipelines. However, the MMF notes that the current requirements for management systems in section 6.1 to 6.5 of the OPR do not mention a regulated company's relationship with the Red River Métis, and therefore do not reflect the mandate of the CER to "exercise its powers and perform its duties and functions in a manner that respects the Government of Canada's commitments with respect to the rights of the Indigenous peoples of Canada" (CER Act, Section 11). While topic paper <i>I. Rights and Interests of Indigenous Peoples, Socio-economic Effects, and Engagement</i> outlines a proposal for the addition of new protection programs to meet regulatory objectives for preventing and addressing impacts to the rights, claims, and interests Red River Métis, it is not clear if	The scope of the management system related to decommissioning and abandonment must include a consideration of potential impacts to the rights and interests of the Red River Métis, including accommodation of those impacts, and requirements for the equal consideration of Red River Métis Knowledge and western science in the assessment and mitigation of those impacts.



			these requirements will also apply to decommissioning and abandonment.	
8	Deactivation and End of Lifecycle, General Comment	B5, B6	The MMF is strongly opposed to changing requirements for pipeline deactivation to require only notification rather than an application. As is currently written, the options proposed in the topic paper allow for a scenario where a regulated company could keep a pipeline deactivated in perpetuity provided it gives a notification of the deactivated status of a pipeline every two years, without being accountable to the CER or MMF regarding the long-term plan for the project beyond that two-year period. This is not consistent with the commitment outlined in the preamble of the CER Act to transparent processes that are built on early engagement and inclusive participation, and the objective stated in topic paper <i>I. Rights and Interests of Indigenous Peoples, Socio-economic Effects, and Engagement</i> to “help ensure appropriate information about a company’s activities is provided to impacted communities.”	The OPR must maintain requirements for applications related to deactivation, rather than notification. Further, the OPR must be revised to require that applications related to deactivation demonstrate adequate consultation with the MMF. In order to prevent regulated companies from leaving a pipeline in a perpetual state of deactivation, proponents should be subject to financial penalties if a period of deactivation extends beyond what was outlined in an initial application and should be required to submit an additional application for deactivation when the deactivation period in the original application expires

C. Emergency Management Topic Paper

9	Emergency Management Topic Paper, Subtopic 1: CSA Z246.2 — Incorporation by Reference	C1	<p>The topic paper proposes that amendments to the OPR include a reference to CSA Z246.2 for emergency preparedness and response requirements. The MMF has no issue with this reference as a requirement for emergency preparedness and response in principle. However, note that</p> <ol style="list-style-type: none"> 1. CSA Z246.2 is specific for emergency preparedness and response for <i>petroleum and natural gas</i> industry systems. The MMF notes that topic paper G. <i>Pipeline Integrity</i> states that “the CER is proposing to amend the definition of onshore pipelines in the OPR to include specific gaseous non-hydrocarbon commodities that are not captured within the current definition” (p. 1), which are later noted specifically to include “hydrogen and carbon dioxide in a gaseous state.” Therefore, while incorporating a reference to CSA Z246.2 may make some contributions to the development of standardized approaches to emergency preparedness for some projects regulated by the CER, this will not apply to all pipelines regulated by the OPR. 2. CSA Z246.2 is designed to provide direction for emergency preparedness and response that considers general human safety, but does not appear to contain specialized direction with respect to environmental protection or any mention of consideration for implications for Red River Métis 	The MMF is supportive of the inclusion of a reference to CSA Z246.2 as a requirement of emergency preparedness and response, provided additional requirements are included related to the applicability of non-petroleum and natural gas pipelines, their environmental impacts and impacts on the rights, claims, and interests of the Red River Métis.
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			Citizens. Therefore, a standalone reference to CSA Z246.2 should not be considered a sufficient amendment to the OPR towards the development of adequate emergency preparedness and response and other requirements must also be included.	
10	Emergency Management Topic Paper, Subtopic 2: Priorities to be Considered within the EM Program	C2, C3	<p>The topic paper outlines the proposed amendment to requirements for an emergency management program in the OPR subsection 32(1) that reads: "A company shall develop, implement and maintain an emergency management program that anticipates, prevents, manages and mitigates conditions during an emergency that could adversely affect people, property, sites of historic and cultural significance, or the environment."</p> <p>The MMF notes that, due to the constitutionally protected rights, claims, and interests of Red River Métis Citizens, impacts to Indigenous Peoples require unique, distinct, and tailored consideration in emergency preparedness and response. Therefore, the requirements in subsection 32(1) should be amended to include a distinct direction to a company to engage with the MMF in the development of ensure emergency management programs for pipelines within the National Homeland of the Red River Métis, tailoring preparedness planning and response measures, to speak to the specific needs identified.</p> <p>The MMF also notes that this requirement also assumes a proponent's awareness of locations of historic and cultural significance but does not expressly require confirmation that the MMF concur that this information is complete nor that measures aimed at protecting culturally significant or sensitive sites are appropriate.</p> <p>Additionally, while the amendment provides an improved consideration of conditions during an emergency that could affect sites of cultural significance, it does not explicitly require emergency response plans to include information about culturally significant sites to inform emergency response measures, and to assess impacts following an event.</p>	Amendments to Section 32 of the OPR must include (1) Distinctions-based requirements for preparedness and response measures, (2) Requirements that the MMF for projects found to potentially impact the National Homeland of the Red River Métis have provided confirmation that adequate baseline information has been collected and integrated into the assessment of potential impacts to the environment and sites of historic and cultural significance (3) Requirements for emergency response plans to include information about culturally significant sites to inform emergency response measures, and to assess impacts following an event.
11	Emergency Management Topic Paper, Subtopic 3: Consolidation of current regulatory framework requirements within the	C4, C5, C6	In order to address issues related to the lack of accessibility of a company's emergency response plans, the topic paper outlines a proposal to add to the OPR the requirements of the CER letter dated March 26, 2015, compelling submission of Emergency Procedures Manuals and Board Orders AO-001-MO-006-2016	The OPR must include requirements for the complete contents of emergency response plans to be provided to the MMF where the project exists or otherwise impacts the National Homeland of the Red River Métis, under the terms of suitable confidentiality agreements or project lifecycle agreements.



	OPR		<p>“Compelling Publication of Emergency Procedures Manuals” and AO-001-MO-002-2017 “Compelling Publication of Emergency Management Program Information on Company websites.”</p> <p>As outlined in the 2019 advice to the CER provided by the Line 3 IAMC, a central issue related to the accessibility of emergency response plans is that they are allowed to be filed with the CER confidentially. This is problematic: for the MMF to be meaningfully engaged in emergency-related preparedness and response, we require complete access to these documents. Information published online about emergency management programs is rarely project specific and does not typically outline specific considerations to the rights, claims, and interests of the Red River Métis that may be impacted in the event of an emergency. If the OPR were to adopt the confidentiality provisions upheld in the CER letter dated March 26, 2015, and Board Orders AO-001-MO-006-2016 and AO-001-MO-002-2017, this problem would be perpetuated, and our concerns would remain unaddressed.</p>	
12	Emergency Management Topic Paper, Subtopic 3: Consolidation of current regulatory framework requirements within the OPR	C4, C5, C6, C8	<p>The topic paper outlines a proposal to add to the OPR requirements outlined in “Industry Best Practices for Notifications to Indigenous Nations and Communities regarding CER-reportable Incidents,” published by the CER in 2022. This best practices document gives the following guidance for the development of an emergency contact notification list: “Companies should determine which Indigenous Nations and Communities and/or traditional territories lie along or are overlapped by the right of way (or other company property upon which CER-regulated pipelines and facilities are located), including areas where Indigenous peoples exercise Indigenous rights that could be affected by an immediately reportable incident.”</p> <p>The MMF notes three significant limitations in this guidance document, consistent with the 2019 Advice to the CER provided by the Line 3 IAMC: (1) Red River Métis Citizens’ rights, claims, and interests, and heritage and cultural resources can be impacted outside of the pipeline right-of-way, particularly in the event of a migrating spill. Therefore, emergency notification should not be limited only to the right of way or other company property upon which CER-regulated pipelines and facilities are located, but should consider the extent of impacts in a worst-case emergency scenario. (2) In many situations, the National Homeland of the Red River Métis may not overlap with a</p>	<p>The incorporation of “Industry Best Practices for Notifications to Indigenous Nations and Communities regarding CER-reportable Incidents,” published by the CER in 2022, is not sufficient. The OPR must include the requirements and provisions described in this comment for (1) notification to the MMF of an emergency, for all pipelines that intersect the National Homeland of the Red River Métis (2) The CER’s responsibility to give direction for the scope of notification, communication, and involvement of the MMF in emergency response.</p> <p>Further, as noted in Comment 10, notification alone is not appropriate, as such notifications must align with communication protocols identified by the MMF.</p>



			<p>pipeline right of way, and/or a proponent might not acknowledge or be aware of the exercise of Red River Métis Citizens' rights, but we still require the same notification and communication as First Nations overlapping a right of way in the event of an emergency. (3) The CER must ensure that their list and the proponent's list includes the MMF for all projects within or which may impact the National Homeland of the Red River Métis regardless of proximity to the right of way, and must not delegate responsibility to the proponent to develop their own list. Given the Government of Canada's responsibility to the constitutionally protected rights, claims, and interests of Red River Métis Citizens, the CER must confirm and validate with the MMF the nature of notification, communication, and involvement in emergency response that is required for all CER regulated projects.</p>	
13	C. OPR – Emergency Management Topic Paper, Subtopic 4: Liaison Activities and the Continuing Education Program	C7, C8	<p>The topic paper outlines a proposal to clarify requirements for continuing education programs related to emergency management. Currently section 35 of the OPR includes very clear explicit guidance on continuing education programs and emergency response involvement measures of nearby municipalities, fire departments, police, medical facilities, and members of the public residing nearby. However, there are currently no explicit requirements for the involvement of the MMF, MMF response services (e.g., environmental monitors), or MMF facilities and resources. As a result, it means that, while non-Indigenous responders and communities are being provided with the information and protocols necessary to effectively respond to emergencies, MMF response counterparts are being excluded, presenting a risk to Red River Métis Citizens who may be impacted should an accident, malfunction, or other project-related emergency occur.</p>	<p>Any revisions to section 32-35 of the OPR need to ensure that appropriate MMF staff, MMF response services (e.g., environmental monitors), or MMF facilities and resources are receiving the same information and training as non-Indigenous communities, services, facilities, and members of the public. Failure to do so poses a major safety risk to Red River Métis Citizens.</p>
14	C. OPR – Emergency Management Topic Paper, Subtopic 5: Involvement of Indigenous Peoples in EM	C8	<p>The topic paper requests feedback on the CER's requirements within the OPR regarding the involvement of Indigenous Peoples in a company's emergency response program.</p> <p>Consistent with the 2019 Advice to the CER provided by the Line 3 IAMC and the submission provided by the MMF during Phase 1 of engagement, we are concerned that very often "Indigenous involvement" in emergency response is limited to notification of an incident, a company hiring Indigenous monitors, or invitations to observe a company's emergency response measures.</p> <p>The OPR must require that a proponent's emergency response</p>	<p>Revisions to the OPR must include requirements for: (1) lifecycle project agreements with the MMF where impacted by projects that include provisions for involvement in emergency response (2) the <i>co-development</i> of emergency response plans with the MMF (3) details regarding the <i>involvement</i> of the MMF in emergency response programs (e.g. role and authority of Indigenous Nations in emergency response) beyond simply providing information on these programs or providing notifications in the event of an emergency, including capacity, training, and funding provided to ensure the MMF has the capacity to participate.</p>



			<p>plans indicate how the proponent intends to <i>involve</i> the MMF where Red River Métis Citizens, rights, claims, or interests are potentially impacted, in emergency response programs (e.g., role and authority of MMF in emergency response) beyond simply providing information on these programs or providing notifications in the event of an emergency. The plans must be co-developed with the MMF and filed with and reviewed by the CER. This way, the CER can verify that plans include appropriate involvement by the MMF and the necessary support by proponents to ensure the MMF has the capacity to participate.</p> <p>The OPR should further require the co-development of such emergency plans through required lifecycle project agreements with the MMF where impacted by a project, which the co-development of emergency response plans is a subject of.</p>	
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D. Environmental Protection Topic Paper

15	D. OPR – Environmental Protection Topic Paper, Subtopic 1: Duty to report and manage contamination	D1	A significant shortcoming of the Remediation Process Guide is that it only requires that “Indigenous Peoples and communities” be “adequately engaged” in the development and implementation of remedial action plans and risk management plans only when “contamination occurs on reserve lands, Métis settlement lands, or is suspected to have migrated onto these lands.” This does not ensure adequate communication, let alone consultation will take place where contamination might affect land or water throughout the National Homeland of the Red River Métis, even though the Aboriginal rights of Red River Métis Citizens would be impaired.	The OPR and Remediation Process Guide must be amended to include requirements that adequate consultation take place in the development of remedial action plans and risk management plans with the MMF in any instances where a company becomes aware of contamination or potential contamination in any area of the National Homeland of the Red River Métis.
16	D. OPR – Environmental Protection Topic Paper, Subtopic 1: Duty to report and manage contamination	D1	Within the OPR and the Remediation Process guide, contaminated site management focuses primarily on following the guidance provided by the Canadian Council of Ministers of the Environment (CCME) and Health Canada when contemplating measures and methods to be applied when developing and implementing a remedial action plan. However, what is not considered when determining if a site has been successfully remediated or rehabilitated is what successful contaminant abatement means for Red River Métis Citizens who may use the land and waters at or near the site of contamination. This includes consideration of how this contamination and subsequent remedial action restores safety and confidence for Red River Métis Citizens who choose to exercise their rights in this area, and the rights-based and psycho-social impacts from a failure to consider the rights,	Both the OPR and Remediation Process Guide need to be revised to ensure the impacts to rights, interests, and well-being of Red River Métis Citizens are criteria that are factored into the Remedial Action Plan guidance provided. This includes guidance or a checklist jointly developed with the MMF where impacted, on steps the CER and proponents <i>must</i> take when assessing and remediating contaminated sites to ensure potential rights-based, psychosocial, and subsistence-based impacts are appropriately addressed.



			interests, and well-being of Red River Métis Citizens when making such determinations.	
17	Environmental Protection Topic Paper, Subtopic 2: Section 21 of the OPR: Reclamation, Vegetation Management, and Restoration	D2, D3, D4	The topic paper states that during Phase 1 engagement, the CER heard that “restoring land to current land use may not adequately address the cumulative effects that multiple projects have on the cultural and historical use of the land.” (p. 3) However, the MMF notes that the CER’s proposed additions to section 21 of the OPR are still limited to requirements for “the right-of-way to be restored to a condition consistent with pre-disturbance land use.” (p. 4) It is not clear if the subsequent comments in the topic paper regarding the potential involvement of “Indigenous peoples” in the development of restoration goals will also be explicitly included in section 21 of the OPR or is simply provided as commentary in the context of the topic paper.	Section 21 of the OPR must include express requirements that restoration goals are co-developed with the MMF, and that the MMF impacted by a project provide its confirmation that adequate consultation has taken place in the development of restoration plans before they are approved by the CER.
18	Environmental Protection Topic Paper, Subtopic 3: Section 21 of the OPR – Participation in development of environmental monitoring by Indigenous Peoples	D5, D6	Section 2 of the Phase 1 Discussion Paper stated that “the CER aims to make meaningful change in the CER’s requirements and expectations of regulated industry to advance Reconciliation” and that CER expects “regulated companies to work differently to support Reconciliation with Indigenous peoples” (p. 3). The topic paper requests input on appropriate mechanisms to ensure Indigenous Peoples are meaningfully involved in monitoring over the lifecycle of the pipeline. It is difficult to provide general guidance on appropriate models for the involvement of the MMF in monitoring over the lifecycle of a pipeline: each project is subject to unique factors and considerations in terms of risks and potential impacts to the environment and the rights, claims, and interests of Red River Métis Citizens. However, it is our position that in order to make such “meaningful change” to advance reconciliation and ensure the MMF is meaningfully involved in monitoring over the lifecycle of the pipeline, a vital change to the OPR is the addition of requirements for regulated companies to establish and maintain lifecycle agreements with the MMF for projects that may impact the National Homeland of the Red River Métis covering all aspects of their involvement in all stages of the project lifecycle, which includes monitoring. This will ensure that approaches to monitoring are developed in the context of an agreement that allows the CER to ensure the duty to consult and accommodate has been fulfilled, and that jurisdiction and oversight of projects is meaningfully shared between the CER and the MMF.	The revised OPR must include requirements for regulated companies to establish and maintain lifecycle agreements with the MMF for projects that may impact the National Homeland of the Red River Métis, covering all aspects of their involvement in all stages of the project lifecycle, including monitoring.



19	Environmental Protection Topic Paper, Subtopic 3: Section 21 of the OPR – Participation in development of environmental monitoring by Indigenous Peoples	D5, D6	<p>Currently, Indigenous hiring, procurement, and content—both in monitoring and oversight but also in business contracting and procurement—are regarded as measures to aspire toward, as indicators of good corporate and social responsibility results for a project. However, the MMF asserts that hiring of Red River Métis Citizens and content inclusion were shifted to be treated as performance metrics for regulated companies, and the CER to be evaluated against, this would offer a mechanism for enhanced oversight and transparency through stronger requirements to involve the MMF and Red River Métis Citizens and/or businesses in the lifecycle regulation of pipelines.</p> <p>In practical terms, this could involve setting specific targets for companies for Red River Métis content for projects that may impact the National Homeland of the Red River Métis. For example, on the CER side, performance metrics could include the number of joint inspections carried out by the CER and the MMF. On the company side, it could include targets with respect to number or percentage of Red River Métis Citizens hired and/or businesses contracted. As a starting point, the CER could look to the targets set out in the current government’s Ministerial Mandate letter for Public Services and Procurement that aim to have at least 5% of federal contracts awarded to businesses managed and led by Indigenous Peoples and use this target as a minimum performance metric to evaluate themselves and regulated companies against. The MMF believe that while this may serve as a reasonable national target, individual projects should reflect the demographics in which they are set, with projects within the National Homeland of the Red River Métis, seeing significantly greater levels of Red River Métis-specific content.</p>	<p>The CER should aim to implement a performance metric, both for its own operations and as a standard for regulated companies, require a minimum level of Red River Métis content for projects that may impact the National Homeland of the Red River Métis. Red River Métis opportunities and content should be reflective of the relative Red River Métis population affected, and serve as a minimum performance metric to evaluate themselves and regulated companies against.</p> <p>In addition to setting this target, the CER should work collaboratively with the MMF to develop systems and accountability for performance metrics, such as Environmental Social Governance (ESG) criteria, to ensure that performance metrics can be realistically achieved and maintained in a sustained manner.</p>
20	Environmental Protection Topic Paper, Subtopic 4: Environmental Protection Plan required for Construction and Operation and Maintenance Activities	D8, D9, D10	<p>The topic paper proposes the addition of requirements in the OPR for Environmental Protection Plans to include measures related to operations, maintenance, and abandonment phases, not just the construction phase. In principle, the MMF is supportive of this proposal, as environmental protection throughout all phases of a project's lifecycle is vital.</p> <p>However, what does not seem to be addressed in this proposal or in Subtopics 1 and 3 of the Rights and Interests, Socio-Economic Effects and Engagement Paper is for both the project-specific environmental protection plans and company-wide environmental protection programs to have integrated efforts to incorporate Red River Métis Knowledge and land use information provided to the proponent. For project-specific plans, this data can inform site-specific protections. For broader</p>	<p>Revisions to the OPR must include explicit requirements for both the project-specific environmental protection plans and company-wide environmental protection programs to include integrated efforts to incorporate Red River Métis Knowledge and land use information provided to the proponent.</p> <p>The OPR and CER Filing Manuals should also be revised to include clearer requirements for integrating information between project-specific and company-wide EPPs, with a particular focus on more integrated information regarding Red River Métis Knowledge, land use, and cumulative impacts.</p>



			company programs, this could inform planning and oversight for operations and practices with respect to environmental protections and cumulative effects.	
21	Environmental Protection Topic Paper, Subtopic 5: Construction to Operations and Sale or Transfer of Assets Transition Plans	D11, D12	The MMF appreciates the CER's recognition of issues with the lack of continuity between the environmental information and commitments presented by companies during the application stage and the activity of contractors and operations personnel during the lifecycle of the project. A particular challenge that the MMF has encountered and observed when engaging with companies is the statement that third-party contractors are independent of the pipeline operators and so are not necessarily beholden to similar conditions or requirements. This is particularly true around the communication, notification, and consultation requirements a company has in relation to the MMF or abiding by environmental commitments established between a company and the MMF.	The OPR and corresponding elements of the regulatory framework should be revised to ensure third-party contractors are beholden to the same requirements and practices of pipeline operators. In particular, this should include ensuring contractors conducting environmental work follow the same communication and notification protocols companies have with the MMF, including cultural heritage chance-find protocols.
22	Environmental Protection Topic Paper, Subtopic 6: Climate Resiliency	D13, D14	The topic paper states that the CER's objectives for revisions to the OPR related to climate resiliency are to "help ensure that companies can anticipate, prepare, and respond to the impacts of hazardous events, trends, or disturbances related to climate change." As part of a requirement related to continual assessment of climate risks and the implementation of a process to manage and mitigate these risks, there must be requirements that environmental protection plans be reviewed, updated and submitted to the CER at an increased frequency to account for the unstable and uncertain conditions of the natural environment induced by climate change and extreme weather events. Companies must be required to demonstrate how both western science and Red River Métis Knowledge and input has been considered and incorporated into both the characterization of climate change effects and approaches to manage and mitigate those risks.	Revisions to the OPR should include requirements (1) for the review, updating, and submission of environmental protection plans at an increased frequency (2) to demonstrate how western science and Red River Métis Knowledge and input has been equally considered and incorporated into both the characterization of climate change effects and approaches to manage and mitigate those risks.
23	Environmental Protection Topic Paper, General Comment	n/a	Despite acknowledging, in the "What We Heard Report," that respondents called for "improvements to the manner in which cumulative effects and associated impacts to lands, resources, and Indigenous and treaty rights are assessed, considered, and managed" (p. 9), the MMF is deeply concerned that no specific objectives or measures were proposed in this topic paper related to the assessment, consideration, and management of cumulative effects. The Government of Canada has stated that it recognizes that cumulative effects is an important issue that requires vigilant attention, collaboration and partnerships (Government of	Revisions to the OPR must include requirements for the assessment, consideration, and management of cumulative effects in both project-specific Environmental Protection Plans and company-wide Environmental Protection Programs. Companies must be required to demonstrate that meaningful consultation (as defined by the MMF) has occurred with the MMF, including the equal consideration of western science and Red River Métis Knowledge, in both the assessment of cumulative effects and measures to address cumulative effects.



			Canada Interim Message on Cumulative Effects, August 2022), and the B.C. Supreme Court ruling in <i>Yahey v. British Columbia</i> further demonstrates that cumulative effects of the energy sector on the environment and the rights, claims, and interests of Red River Métis Citizens must be considered in order for the Crown to uphold its duty to consult and accommodate.	
E. Human and Organizational Factors Topic Paper				
24	Human and Organizational Factors Topic Paper	E8, E9, 10	This topic paper outlines a proposal to integrate insights from the discipline of human and organizational factors (HOF) to support the prevention of harm and impact safety and environmental protection outcomes. The MMF notes the inherent cultural bias in the CER's Safety Culture Learning Protocol, including in definitions of systems thinking, team and organizational dynamics, rationality, and what constitutes a just workplace.	It is imperative that anticipating, preventing, managing, mitigating, and accommodating socio-technical hazards is based on a holistic and distinctions-based definition of the well-being of Red River Métis Citizens. The CER should partner with the MMF in the development of culture and safety learning materials for regulated companies that are culturally specific to Red River Métis, and applicable to projects that may impact the National Homeland of the Red River Métis.
F. Management System and Contractor Management Topic Paper				
25	Management System and Contractor Management Topic Paper	F12, F13, F14, F15	The MMF appreciates the CER's recognition, in topic paper D. <i>Environmental Protection</i> , of issues with a lack of continuity between the environmental information and commitments presented by companies during the application stage and the activity of contractors and operations personnel during the lifecycle of the project. A particular challenge that the MMF has encountered and observed when engaging with companies is the statement that third-party contractors are independent of the pipeline operators and so are not necessarily beholden to similar conditions or requirements. This is particularly true around the communication, notification, and consultation requirements a company has in relation to the MMF or abiding by environmental commitments established between a company and the MMF.	The OPR and corresponding elements of the regulatory framework should be revised to ensure third-party contractors are beholden to the same requirements and practices of pipeline operators. In particular, revisions should ensure that contractors conducting environmental work follow the same communication and notification protocols companies have with the MMF, including cultural heritage chance-find protocols. Adherence to such communication, notification, and consultation requirements and commitments related to environmental and cultural heritage protection must be included in any description of contractor management, auditing, compliance enforcement outlined in the OPR and related technical guidance.
G. Pipeline Integrity Topic Paper				
26	Pipeline Integrity Topic Paper, Subtopic 2: Use of technologies for which no standard is set out in the OPR	G1, G2, G3	In addition to the proposal to amend the definition of onshore pipeline in the OPR to include the transmission of hydrogen and carbon dioxide in a gaseous state, this topic paper also proposes adding a new requirement to the OPR that companies establish and implement a process for evaluating a technology for which no standard is set out in the OPR, and which has not been independently reviewed and publicly released. The MMF is concerned with the proposal that a regulated company may establish and implement their own process for the evaluation and assessment of their own project, and also the	Where a company proposes a pipeline for transport of a commodity not mentioned in the OPR or uses a technology for which no standard is set out in the OPR, a unique process for evaluating the project must be co-developed <i>between the CER and the MMF</i> , not by the regulated company.



			concession for “independent reviews” of new technologies, which may be difficult to evaluate and ensure the adequate involvement and consultation of the MMF.	
27	G. OPR – Pipeline Integrity Topic Paper, Subtopic 3: Pipeline Design	G4, G5	The topic paper outlines a proposal to add requirements to the OPR for pipeline design to include supporting risk assessments and geohazard assessments. The MMF is supportive of these requirements being added to the OPR.	In particular, there must be specific requirements for geohazard assessments related to climate change and extreme weather events. Companies must be required to demonstrate how both western science and Red River Métis Knowledge and input has been considered and incorporated into both the characterization of geohazards and approaches to manage and mitigate those risks
28	G. OPR – Pipeline Integrity Topic Paper, Subtopic 3: Pipeline Design	G5	The topic paper proposes adding a requirement for companies selecting trenchless technology for pipeline installations to notify the CER if the installation occurs under a water body, and requests input on the threshold size of the installation that would trigger such a notification.	Given the significant potential impacts of trenchless installations of pipelines under water, the MMF’s position is that any size of pipeline proposed for trenchless installation should trigger a notification to the CER and the MMF for projects that may impact the National Homeland of the Red River Métis.
H. Reporting Harm Topic Paper				
29	H. OPR – Reporting Harm Topic Paper	n/a	The topic paper indicates that, based on learnings from implementing the OPR in the past, the CER has identified an opportunity to improve its definition of “incident.” In the MMF’s experience, reporting of incidents by regulated companies is often insufficient and does not provide notification of the range of impacts and events relevant to Red River Métis Citizens.	The definition of incident should be expanded to include (1) any impacts to a site of cultural heritage or archaeological significance (2) any adverse effect on the environment not anticipated in impact assessments previously submitted by a regulated company. (3) any adverse effect on the Aboriginal or treaty rights of the Red River Métis not anticipated in impact assessments previously submitted by a regulated company. Requirements for notifications of such incidents should be consistent with our comments related to notification protocols on topic paper C. <i>Emergency Management</i> .
I. Rights and Interests of Indigenous Peoples, Socio-economic Effects, and Engagement Topic Paper				
30	Rights and Interests of Indigenous Peoples, Socio-economic Effects, and Engagement Topic Paper, Sub-topic 1: Preventing and Addressing Impacts to the Rights and Interests of Indigenous Peoples	I1, I2, I3, I4	A foundational issue in the current OPR, from the MMF’s experience with regulated companies, is that the purpose and objective of the OPR is defined far too narrowly. Section 6 of the OPR currently reads: “The purpose of these Regulations is to require and enable a company to design, construct, operate or abandon a pipeline in a manner that ensures (a) the safety and security of persons; (b) the safety and security of pipelines and abandoned pipelines; and (c) the protection of property and the environment.” While the MMF is supportive of pipeline security and of the safety of employees and the public, there is no mention in the purpose of the OPR of the Red River Métis or requirements for	The purpose of the OPR outlined in section 6 should be updated to reflect: <ol style="list-style-type: none"> 1. The mandate of the CER to “exercise its powers and perform its duties and functions in a manner that respects the Government of Canada’s commitments with respect to the rights of the Indigenous peoples of Canada” (CER Act, Section 11); 2. The objective of the CER to “advance Reconciliation with Indigenous peoples in manner that is consistent with the United Nations Declaration on the Rights of Indigenous Peoples” (Phase 1 Discussion Paper, p. 3); 3. The CER’s commitment to “advancing the TRC (Truth and Reconciliation) Calls to Action,” specifically “Calls



			<p>regulated companies to conduct engagement, build relationships with the MMF or support the accommodation of Section 35 rights, claims, and interests. As a result, the OPR do not sufficiently compel regulated companies to uphold principles of partnership or reconciliation in their operations. How the OPR defines its own purpose in section 6 is critical, as it serves as the basis for the interpretation and application of the rest of the regulations.</p>	<p>to Action 43, 44 and 92 which call the government and business sector of Canada to adopt UNDRIP as a reconciliation framework and to apply its principles, norms and standards to policy and core operational activities involving Indigenous peoples and their lands and resources” (Phase 1 Discussion Paper, p. 3);</p> <ol style="list-style-type: none"> 4. A commitment to regulate onshore pipelines in such a way as to require companies to work towards securing the support of the MMF as the MMF defines it for projects that may impact the National Homeland of the Red River Métis. <p>All subsequent sections in the OPR should be updated or replaced to reflect this updated purpose statement, including requirements for:</p> <ol style="list-style-type: none"> 1. The meaningful integration of the Red River Métis Knowledge in the design, construction, operation, and abandoning of a pipeline; 2. Mitigating impacts to the rights, claims, and interests of the Red River Métis; 3. Sharing benefits of projects with the Red River Métis; 4. The involvement of the Red River Métis in project ownership and decision-making, facilitated by lifecycle project agreements with the MMF.
31	<p>Rights and Interests of Indigenous Peoples, Socio-economic Effects, and Engagement Topic Paper, Sub-topic 1: Preventing and Addressing Impacts to the Rights and Interests of Indigenous Peoples</p>	11,12, 13, 14	<p>While the topic paper states that in Phase 1 engagement, “the CER also heard that the involvement of potentially affected Indigenous Peoples and the incorporation of Indigenous Knowledge in lifecycle oversight should be increased,” the options proposed do not adequately provide a mechanism for meaningful involvement of the MMF in lifecycle oversight. Even the language set out in the presentation of the CER’s objective for improvement clearly positions the regulated company and the CER as the decision-makers for a project, with the MMF relegated to the role of providing input. This does not fulfill the CER’s goal for the OPR review process of making “meaningful change in the CER’s requirements and expectations of regulated industry to advance Reconciliation” (Phase 1 Discussion Paper, p. 3) or the Nation-to-Nation relationship envisioned in the <i>United Nations Declaration for Indigenous Peoples Act</i>.</p> <p>Further, while the MMF appreciates the opportunity to participate in bodies like the Line 3 IAMC, decision-making and oversight authority still remains with the regulated company and the CER under the terms of reference of the IAMC. Therefore, even in the context of IAMCs as they are currently configured,</p>	<p>A critical mechanism that should be used to support the participation of the MMF in pipeline oversight is a requirement in the OPR for regulated companies to establish lifecycle agreements with the MMF that outline the terms, conditions, and roles the MMF could play in oversight throughout the life of the project.</p> <p>In addition, the OPR could look to integrate requirements that draw on structures and processes the CER either already has in place or is in the process of developing. For example, the CER now has an Indigenous Advisory Committee, an Indigenous Monitoring program, supports joint inspections between the CER and impacted Indigenous Nations, and has and continues to use Indigenous advisory and oversight committees on several projects it regulates. The next logical step from the perspective of the MMF is to codify these various programs, policies, and committees into the OPR and other legislation and regulations that govern pipeline oversight within the CER. The CER needs to revise the OPR and related lifecycle policy and guidance to ensure the various policies, programs, and structures that promote Indigenous participation and oversight are represented as mandatory practices and requirements that the CER and</p>



			<p>the MMF is prevented from effecting any systemic or material change in decision-making related to the integration of Red River Métis Knowledge in project design, environmental protection, monitoring, and compliance. The MMF supports the comments in the TMX IAMC during Phase 1 engagement that there is a need to transform the role of IAMCs and Indigenous governing bodies “from advising government to truly co-managing with government, in a manner consistent with the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).” The revisions to the OPR represent an opportunity to enact a systemic change to this end.</p>	<p>regulated companies must follow when it pertains to MMF participation in lifecycle oversight activities.</p> <p>Lastly, to support MMF oversight in the energy sector, the OPR must include reference to the CER’s approach to authorizing Indigenous governing bodies to exercise authority and powers, as enabled by section 77 and 78 of the <i>Canadian Energy Regulator Act</i>.</p>
32	<p>Rights and Interests of Indigenous Peoples, Socio-economic Effects, and Engagement Topic Paper, Sub-topic 1: Preventing and Addressing Impacts to the Rights and Interests of Indigenous Peoples</p>	11,12, 13, 14	<p>Section 1 of the Phase 1 Discussion Paper described a management system as “a systematic approach designed to effectively manage and reduce risk” that “anticipates, prevents, manages and mitigates conditions that may adversely affect the safety and security of the company’s pipelines, employees, the public, as well as property and the environment” (p. 2). The Discussion Paper goes on to describe the OPR requirement that a management system “be clear; have good documentation and be understood by all employees, at all levels; apply to all areas of work and include every regulated activity conducted by the company; and be proactive, able to anticipate issues” and that a carefully designed and well implemented management system “supports a strong culture of safety, and is fundamental to keeping people safe and protecting the environment” (p. 2).</p> <p>While the MMF agrees these are good objectives for the management system of a regulated company, and that this serves as a good summary of the requirements currently set out in Section 6.1–6.5 of the OPR, they do not sufficiently consider the relationships of regulated companies with the MMF uniquely, and therefore do not reflect the mandate of the CER to “exercise its powers and perform its duties and functions in a manner that respects the Government of Canada’s commitments with respect to the rights of the Indigenous peoples of Canada” (CER Act, Section 11).</p> <p>While this topic paper proposes the inclusion of a management system requirement in section 6.5 of the OPR for companies “to establish and implement a process to engage with Indigenous Peoples and to demonstrate how Indigenous Knowledge, including protocols and practices, that is made available to a company and is applicable to its protection programs, is incorporated into these programs” this still falls short of management system requirements that would fulsomely</p>	<p>In addition to the proposed requirement related to demonstrating how the MMF’s protocols and practices have been incorporated into a management system, regulations for management systems should be updated to include requirements for:</p> <ol style="list-style-type: none"> 1. Accommodating (avoiding, mitigating, and compensating) inclusive of impacts to the rights and interests of the Red River Métis; 2. Sharing benefits of projects with impacted Red River Métis; and 3. Include the involvement of the Red River Métis in all aspects of project planning, decision-making, monitoring and compliance, facilitated by lifecycle project agreements with the MMF for all projects that may impact the National Homeland of the Red River Métis.



			consider the rights, claims, and interests of the Red River Métis in a way that reflects the Government of Canada's commitments and obligations in respecting Aboriginal and Treaty rights, most notably including the duty to accommodate, as well as the Red River Métis Self-Government Recognition and Implementation Treaty signed between the MMF and the Government of Canada	
33	Rights and Interests of Indigenous Peoples, Socio-economic Effects, and Engagement Topic Paper, Sub-topic 1: Preventing and Addressing Impacts to the Rights and Interests of Indigenous Peoples	14	A vital aspect of including Red River Métis Knowledge in consultation and engagement is the integration of MMF protocols set out in MMF Resolution No. 8 Framework. These cultural practices and protocols are specific to the MMF and as a result must be followed for any CER-regulated facilities that have any potential effects on the National Homeland of the Red River Métis or otherwise impacts the rights, claims, and interests of Red River Métis Citizens. OPR and related guidance should be updated and revised to include requirements to abide by Nation-specific cultural and consultation protocols, not only in its management system, but in every aspect of lifecycle oversight and regulation activities related to onshore pipelines.	Language regarding the incorporation of key cultural and consultation protocols when engaging with the MMF (e.g. Resolution No. 8 Framework), must be reflected in the revisions made to the regulations. This must be reflected not only in management systems, but also in every aspect of lifecycle oversight and regulation activities related to onshore pipelines. The OPR should outline that the CER will provide such cultural and consultation protocols to regulated companies where they have been provided to the CER, with a clear delineation of responsibilities between the CER and the regulated company in fulfilling the protocols.
34	Rights and Interests of Indigenous Peoples, Socio-economic Effects, and Engagement Topic Paper, Sub-topic 1: Preventing and Addressing Impacts to the Rights and Interests of Indigenous Peoples	15	The protection of cultural heritage and archaeological resources is a commitment that the CER and operators need to demonstrate and uphold throughout the life of a project, not just during the assessment, planning, and construction phases. Of particular importance is ensuring protection of cultural heritage resources during integrity management activities such as integrity digs and large-scale maintenance repairs. As such, the requirements within both the OPR and CER's guidance on integrity management for facilities should include: <ol style="list-style-type: none"> 1. Chance-find protocols collaboratively developed and implemented with the MMF as part of the condition compliance of a Project 2. A clear mechanism for providing both operators and their third-party contractors with chance-find protocols, and a commitment to enforcement action should they fail to comply with the protocol 3. Clear, direct cultural heritage monitoring requirements throughout the life of the Project. This includes the integration of cultural heritage components in joint inspections carried out by the CER and the MMF 	Strong requirements regarding the protection of cultural heritage resources are something that should be reflected in both the OPR and any CER guidance on integrity management systems for pipeline operators. The OPR and integrity management guidance should include clear requirements regarding: <ol style="list-style-type: none"> 1. The development of chance-find protocols in collaboration with the Red River Métis and the MMF 2. The requirement for operators and their third-party contractors to review, implement, and comply with these protocols 3. A stated commitment by the CER to enforcement action when protocols are not complied with 4. The inclusion of cultural heritage monitoring in joint inspections carried out by the CER and the MMF 5. Options for alternative dispute and conflict resolution to ensure the MMF has a forum for raising issues when needed
35	Rights and Interests of Indigenous Peoples, Socio-economic Effects, and Engagement Topic Paper, Sub-topic 1: Preventing and	14, 15, 16	Although the topic paper proposes the inclusion of a management system requirement in section 6.5 of the OPR for companies "to establish and implement a process to engage with Indigenous Peoples and to demonstrate how Indigenous Knowledge, including protocols and practices, that is made available to a company and is applicable to its protection	The OPR management system requirements and related guidance must be revised to ensure any traditional land or resource use information provided outside of the planning, assessment, and pre-construction phases of a project are appropriately considered and, where necessary, mitigated and protected.



	Addressing Impacts to the Rights and Interests of Indigenous Peoples		programs, is incorporated into these programs,” there still appears to be a gap regarding the consideration and inclusion of Red River Métis Knowledge and land resource use information provided outside of either the development of an environmental and socio-economic assessment (ESA) or the CER approvals process for a project. As a result, there is a need for explicit requirements for the inclusion and application of Red River Métis Knowledge and land resource use information throughout the life of a project, including during operations, maintenance, as part of accidents, malfunctions, and emergency response, and to inform either the decommissioning or abandonment of the facility at the end of its operational lifecycle. Under the current OPR, regulated companies are sometimes required to provide these plans to Indigenous Nations for feedback if conditions are imposed by the CER, but should be a standard requirement of all regulated companies and projects.	This includes but is not limited to guidance pertaining to: <ol style="list-style-type: none"> 1. Integrating Red River Métis Knowledge and land resource use information into ongoing project monitoring; 2. A procedure or checklist for operators to follow when revising environmental protection plans or management systems to reflect this information; 3. A process for collaboration and dispute resolution between operators and the MMF, when there is dispute on how to offset, manage, or mitigate potential interactions with sites of cultural importance; 4. Description of how Red River Métis Knowledge and land resource use information will be used in instances of accidents, malfunctions, or other emergencies, including appropriate notification to the MMF and Red River Métis Citizens.
36	Rights and Interests of Indigenous Peoples, Socio-economic Effects, and Engagement Topic Paper, Sub-topic 2: Managing Socio-Economic Effects	17, 18	<p>The topic paper proposes either the addition of a new protection program related to anticipating, managing, and mitigating socio-economic effects, or the expansion of the existing Environment Protection Program requirements in section 48 of the OPR. The MMF notes that a unique and important consideration of socio-economic effects on the Red River Métis are that impacts not only be anticipated, managed, and mitigated, but also accommodated and compensated.</p> <p>The MMF is supportive of a proposal to add a new protection program related to anticipating, managing, and mitigating socio-economic effects.</p>	A socio-economic effects program should include requirements for accommodation and compensation related to socioeconomic effects on the Red River Métis.
37	Rights and Interests of Indigenous Peoples, Socio-economic Effects, and Engagement Topic Paper, Sub-topic 2: Managing Socio-Economic Effects	17, 18, 19, 110, 111	<p>As was noted in the Phase 1 Discussion Paper, “[the] preamble of the CER Act expresses the Government of Canada’s commitment to assessing how groups of women, men, and gender-diverse people may experience policies, programs, and projects, and to take action that contributes to an inclusive and democratic society and allows for all Canadians to participate fully in all spheres of their lives.”</p> <p>For gender and other intersecting identities, including Red River Métis identity, projects within the National Homeland of the Red River Métis have the potential to impact people in diverse and unique ways. For example, as was noted in Mikisew Cree First Nation’s submission during Phase 1 engagement, the 2019 Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls concluded, “resource extraction</p>	Consistent with Article 22 of UNDRIP, requirements for a socioeconomic effects program need to consider how individuals of diverse and intersecting identities, including Red River Métis women, youth, Elders, and people with disabilities are uniquely and disproportionately impacted by CER regulated pipelines and how to ensure those impacts are adequately addressed throughout the entire lifecycle of the project.



			<p>projects can lead to increased violence against Indigenous women at the hands of non-Indigenous men, as well as increased violence within Indigenous communities. Reports submitted by witnesses substantiate their claims, as does a considerable body of literature identified by the National Inquiry. They all point to the same conclusion: federal, provincial, territorial and Indigenous governments, as well as mining and oil and gas companies, should do a more thorough job of considering the safety of Métis, First Nations and Inuit women and children when making decisions about resource extraction on or near Indigenous territories.”</p>	
38	<p>Rights and Interests of Indigenous Peoples, Socio-economic Effects, and Engagement Topic Paper, Sub-topic 3: Engaging with Potentially Affected People and Communities</p>	I12, I13	<p>Section 2 of the Discussion Paper states that “the CER aims to make meaningful change in the CER’s requirements and expectations of regulated industry to advance Reconciliation” and that the CER expects “regulated companies to work differently to support Reconciliation with Indigenous peoples” (p. 3). This subtopic seeks feedback on appropriate requirements to fulfill the CER’s objectives to (1) “drive consistency and clarify the requirements for communications and engagement with potentially affected people and communities across the lifecycle” (2) “help ensure that companies are engaging potentially impacted Indigenous Peoples throughout the lifecycle to identify where rights, claims, and interests may be impacted, and how they can be addressed” and (3) “allow for flexibility so that companies can be responsive to, and respectful of, the unique needs, interests, and engagement preferences of Indigenous peoples, potentially affected people and communities.”</p> <p>Consistent with the MMF’s submission during Phase 1 engagement, in order to fulfill these objectives, it is our position that a vital addition to the OPR is the requirement for regulated companies to establish and maintain lifecycle agreements with the MMF for projects that may impact the National Homeland of the Red River Métis covering all stages of the project lifecycle, including planning/approval, construction, operation, and maintenance (including integrity digs), and decommissioning.</p> <p>In addition to the objectives above, this will:</p> <ol style="list-style-type: none"> 1. Provide a meaningful mechanism to demonstrate the MMF’s support for a project 2. Contribute to the protection of cultural heritage and archaeological resources 3. Contribute to the protection of traditional land and resource use and sites of significance for the Red River Métis 4. Allow the CER to ensure the duty to consult and 	<p>Requirements for lifecycle agreements with MMF for projects that may impact the National Homeland of the Red River Métis should be included in the OPR. Requirements for these agreements should include, but not be limited to, the following items:</p> <ol style="list-style-type: none"> 1. Participation in cultural heritage and archaeological assessments 2. Participation in traditional land and resource use assessments 3. Participation in environmental monitoring 4. Participation in facility monitoring (e.g., pipeline or transmission line monitoring) 5. Identification and protection of species considered by Indigenous communities to be at risk 6. Environmental, cultural heritage and socioeconomic mitigation and follow-on programs 7. Economic benefits – procurement, supply chain, other 8. Linear corridor restoration and maintenance with native species, with attention to vegetative species of importance to Indigenous communities or key wildlife species of importance to Indigenous communities 9. Review of project infrastructure enhancements and improvements that may be available to improve and provide capacity for regional infrastructure and services (e.g. oil pipeline pump stations require transmission reinforcement and/or additional regional power generation that can benefit rural/remote communities and regions; emergency management resources that can be deployed for emergencies beyond the regulated infrastructure) 10. Emergency and spill response capacity and resources, including training, equipment, and service contracts 11. Mutually agreed upon approaches to integrating Red River Métis Knowledge and land use 12. Regulatory compliance monitoring



			<p>accommodate has been fulfilled</p> <p>5. Allow for</p> <ol style="list-style-type: none"> a. the benefits of projects to be meaningfully shared between the regulated company and the Red River Métis where impacted, b. Decision-making, jurisdiction, and oversight of projects to be meaningfully shared between the regulated company, the CER and the MMF. 	
39	Rights and Interests of Indigenous Peoples, Socio-economic Effects, and Engagement Topic Paper, Sub-topic 3: Engaging with Potentially Affected People and Communities	I12, I13, I15	<p>The Preamble of the CER Act affirms the Government of Canada's commitment to transparent processes built on early engagement and inclusive participation. The objective outlined in this topic paper to "help ensure that companies are engaging potentially impacted Indigenous Peoples throughout the lifecycle to identify where rights, claims, and interests may be impacted, and how they can be addressed" seems to reflect a desire to fulfill that commitment.</p> <p>However, while the OPR currently includes requirements for: pipeline design, construction, operation; and maintenance, decommissioning, and abandonment, it does not include requirements for a company's engagement with the MMF in the consideration of a regulated company's selected mechanism for regulatory filing and effects assessment. While requirements for such regulatory filings are included in other regulations, there is a gap in the requirements for a regulated company to engage with the MMF as it considers which regulatory mechanism it should select for a project to best consider its impacts.</p>	The OPR should be updated to include a section related to project planning and effects assessment that specifies requirements for a regulated company's engagement with the MMF in the early stages of considering a project and selecting a regulatory mechanism. In a subsequently filed application, the proponent must be required to demonstrate that the regulatory mechanism selected to regulate projects is supported by the MMF where a project may impact the National Homeland of the Red River Métis.
40	Rights and Interests of Indigenous Peoples, Socio-economic Effects, and Engagement Topic Paper, Sub-topic 3: Engaging with Potentially Affected People and Communities	I12, I13, I15	<p>The Preamble of the CER Act affirms the Government of Canada's commitment to transparent processes that are built on early engagement and inclusive participation. The objective outlined in this topic paper to "help ensure appropriate information about a company's activities is provided to impacted communities" seems to reflect a desire to fulfill that commitment.</p> <p>A significant deficiency in the OPR and more broadly in the current regulatory regime related to proactive engagement and communication is the manner in which regulated companies are able to significantly repurpose, expand, or significantly reconfigure an existing pipeline system under the guise of piecemeal applications for maintenance or expansions to portions of a right-of-way over the course of a number of years.</p>	<p>The OPR should be updated to include specific requirements for a regulated company to be transparent about all plans for upcoming and future works on a pipeline system and how currently proposed works will interact with past and future applications. The CER must require this information to be included in project applications, and, where CER staff or intervenors identify substantive connections in terms of a company's operational objectives for a pipeline system and potential environmental effects between separate applications, these applications should be combined and considered jointly. When applications are filed by a regulated company that could have been anticipated at the time of filing a previous related application but were not, the CER should be able to withdraw the approvals granted for the previous application and reconsider it jointly with the new application.</p> <p>Further, the CER should eliminate the 40-km pipeline length for triggering environmental assessments and replace with a</p>



			Revisions to the OPR represent a substantial opportunity to address this systemic problem in the regulation of onshore pipelines and consultation with the MMF.	consultative project screening and scoping approach that examines the real impacts of a proposed project and assumes that an environmental assessment will be triggered, unless it can be proven that impacts will be negligible and that Indigenous Nations consent to any project going forward without an environmental assessment. From the MMF's perspective, tying the trigger for an environmental assessment to environmental impacts ensures that the process addresses significant adverse environmental and socio-economic impacts regardless of the length of pipeline proposed and will eliminate project proponents piecemealing project pipeline lengths into segments under 40 km to avoid environmental assessment requirements.
41	Rights and Interests of Indigenous Peoples, Socio-economic Effects, and Engagement Topic Paper, Sub-topic 3: Engaging with Potentially Affected People and Communities	I15, I16	The MMF is of the perspective that procedural fairness includes having appropriate processes and structures in place for ensuring the duty to consult and Crown consultation are carried out in an effective manner. However, since the transition from NEB to CER, the coordination of Crown consultation has shifted from Natural Resources Canada's jurisdiction to being housed under the CER alongside its functions as both an assessor and lifecycle regulator. This triple role is very concerning to the MMF as the MMF is of the perspective that Crown consultation functions to provide accountability to the CER and operators, and as such, should have a somewhat impartial objective view. However, moving this function to the CER eliminates, or at least gives the perception that impartiality—objectivity, accountability, and commitment of good faith—has been limited.	To better support procedural fairness, good faith engagement, and contribute to Canada's global competitiveness, there needs to be a demonstration that the duty to consult is carried out effectively, including through an accountable Crown consultation process separate from the regulator. As a result, at a minimum the CER needs to demonstrate how Crown consultation teams enforce and promote this objectivity and accountability. This includes but is not limited to demonstration of how ethical walls are enacted within the CER to ensure this accountability is maintained. If such separations cannot be demonstrated, then the CER ought to consider delegating the responsibility of Crown consultation to another federal regulator or ministry such as the Impact Assessment Agency of Canada or Natural Resources Canada, or an Indigenous governing body, as enabled by section 77 and 78 of the <i>Canadian Energy Regulator Act</i> .
42	Rights and Interests of Indigenous Peoples, Socio-economic Effects, and Engagement Topic Paper, Sub-topic 3: Engaging with Potentially Affected People and Communities	I16	The topic paper requests input on other approaches the CER could adopt in its engagement with Indigenous Nations	The CER should consider adopting the Impact Assessment Agency of Canada's approach to developing project-specific Indigenous engagement and partnership plans. Such plans can be developed in collaboration with the MMF during a project's planning and pre-development, outlining at a high level consultation efforts by the CER and other applicable Crown representatives, and information about the delegation of responsibilities for proponent-led consultation and engagement. These plans should also inform MMF-specific consultation plans that further outline an agreement between CER and the MMF about an appropriate approach to consultation based on the scope of the project and the nature of potential impacts. This would provide greater consistency and uniformity in terms of requirements for consultation and engagement, and clarify expectations for regulated companies about their responsibilities



				for consultation and engagement in relation to the Crown's responsibilities.
J. Safety Topic Paper				
43	OPR - Safety Topic Paper	J1, J2, J3, J4	The MMF is concerned that the current and proposed requirements of section 47 of the OPR are limited to consideration only of the physical safety of employees. Section 47 of the OPR must be broadened to consider social and psychological impacts that may be experienced directly or indirectly by Red River Métis Citizens in general, and Red River Métis women in particular.	Section 47 of the OPR must be broadened to anticipate, prevent, manage, mitigate and accommodate social and psychological impacts that may be experienced directly or indirectly by Red River Métis Citizens in general, and Red River Métis women in particular, consistent with Article 22 of UNDRIP. For example, the OPR must include requirements related to anticipating, preventing, managing, mitigating and accommodating impacts to the social and psychological safety and well-being of Red River Métis Citizens employed by a project or in proximity to a project. In particular, requirements should address social and psychological risks associated with work environments such as work camps. The OPR must also include requirements for a regulated company to establish relevant policies and goals to ensure the inclusion, safety, and security of Red River Métis Citizen employees and identify mechanisms for employees to identify and report inclusion, safety, and security issues confidentially. Lastly, the interpretation section of the OPR should also include an explicit definition of the terms "safety" and "security" with consideration to these psychological and social factors, in order to ensure that subsequent auditing and compliance of project safety performance outlined in section 53 of the OPR fulsomely assesses all aspects of the well-being for Red River Métis Citizens affected by a project.
K. Filing Manuals – Environmental and Socio-Economic Assessment Topic Paper				
44	Subtopic 1: Restructuring the ESA Section	K1, K2	<p>The CER objective to improve the ESA in obtaining more information on potential effects on the rights and interests of Indigenous Peoples (and at the same time the readability and clarity of the ESA) is proposed to be achieved by creating a new section on the rights and interests of Indigenous Peoples. The section would consolidate guidance that is throughout the ESA and provide general statements to address the topics when necessary. This would include the proponent's consideration of engagement results, inclusion of Indigenous Knowledge, and climate change resiliency.</p> <p>Generally speaking, consolidation of subject matter can improve the clarity and readability of the ESA. However, such subject isolation does not reflect the nature of environmental and socio-economic impacts on the rights, claims, and interests of the Red River Métis.</p>	<p>Consolidating clear guidance to address the rights and interests of the Red River Métis is an effective mechanism to improve clarity of the ESA. However, segregating this material from guidance on environmental and socio-economic considerations cannot be interpreted as a structure for assessment, due to the interrelated nature of these three components.</p> <p>The overarching topics that will be important to highlight is that the rights and interests of Indigenous Peoples section must be applicable to all other components of the environmental and socio-economic assessment. Subdividing should not enable an ESA process where rights and interests are marginalized, siloed, compartmentalized, assessed separately from environmental and socio-economic considerations.</p> <p>This would result in:</p> <ul style="list-style-type: none"> • Reduced integration of MMF feedback through the other



			<p>Common guidance within the new Indigenous rights and Interests section will identify relevance to other ESA sections and are noted to include the examples of engagement results, indigenous Knowledge and climate change resiliency.</p>	<p>relevant components of the ESA</p> <ul style="list-style-type: none"> • Fragmentation of content on environmental and socio-economic impacts specific to rights and interests from other sections of the ESA <p>If separation is deemed necessary for clarity, the CER must ensure the section serves as a cross-reference hub that emphasizes how rights intersect with every part of the ESA process, rather than isolating them. A new ESA section must clearly communicate that the separation is to highlight importance, not to marginalize the MMF's concerns.</p> <p>While the new section will note where Indigenous rights and interests sub-topics are relevant to the other aspects of the ESA, this must not preclude the fact that some topics will be applicable to all aspects of the ESA. In addition to the topics CER provided as examples, topics should include:</p> <ul style="list-style-type: none"> • Cumulative effects on rights, land use, land access, and cultural practice; • Traditional land use: hunting, harvesting, trapping, fishing etc., considering subsistence and economic well-being; • Socio-economic impacts: infrastructure, service access, mental health (including in relation to cumulative effects), education, social cohesion, community employment, etc.; • Cultural and spiritual values: site impacts, and access to areas of cultural, spiritual, and/or ceremonial importance, respecting cultural protocols for site access and ground disturbance; • Health and well-being: physical, mental, spiritual, and in relation to environmental degradation or ecological grief; • Governance and sovereignty: recognizing governance structure and implementation of MMF-developed processes/protocols/guidelines, etc., empowering community-led monitoring to address impacts, benefit sharing, and accommodation.
45	Subtopic 2: Environmental & Socioeconomic Assessment	K4, K5, K6, K7	<p>The CER is considering:</p> <ul style="list-style-type: none"> • Adding filing guidance to help ensure that applicants incorporate Indigenous Knowledge and engagement results in the selection of valued components (VCs). This includes demonstration of how the VCs chosen reflect both what was heard from engagement and probable project-related effects • Adding discussion of narrow versus broad VCs (or single versus multi-variate VCs) and requirements to help ensure that VCs of various breadths are selected to appropriately cover issues of concern. 	<p>A major component of consultation on CER projects is to consider the adverse impacts to rights due to decisions made regarding a project. Though short of perfect, the use of VCs is one measure in which applicants can demonstrate that they are evaluating these impacts. However, in the MMF's experience, simply requiring consideration of Red River Métis values and perspectives in selecting VCs falls short of ensuring the evaluation process is meaningful in considering impacts and providing information to the MMF to determine whether or not impacts are material.</p>



		<p>This approach offers strengths and weaknesses:</p> <p>Strengths</p> <p>Comprehensive Assessment: Nesting VCs allows broader, general VCs to capture cumulative and interconnected impacts across multiple specific VCs, offering a more holistic view of project effects. For example, a general VC like "Community Well-Being" could integrate narrower VCs such as health, employment, and cultural impacts, addressing synergies and overlaps.</p> <p>Streamlined Analysis:</p> <p>By grouping narrower VCs under a general VC, the assessment process becomes less fragmented and more efficient, avoiding redundancy and reducing complexity in reporting.</p> <p>Cumulative Effects Assessment: Nested VCs can better capture cumulative effects across related categories, which may be missed if VCs are assessed in isolation. This is especially important for understanding the broader implications of interconnected impacts (e.g., environmental degradation affecting both cultural practices and health).</p> <p>Flexibility in Stakeholder Engagement: A nested approach accommodates diverse stakeholder concerns by addressing specific interests under narrower VCs while providing an overarching summary under general VCs.</p> <p>Weaknesses:</p> <p>Loss of Specificity: General VCs might obscure detailed insights about narrower, more localized impacts, leading to a loss of granularity in the assessment. For instance, nesting "Traditional Land Use" under a general VC like "Cultural Resources" may dilute the specific impacts on traditional harvesting practices.</p> <p>Methodological Challenges in Aggregation:</p> <p>Summing effects across VCs requires a clear and consistent methodology to avoid overgeneralization or misrepresentation of individual impacts. Different VCs may use incompatible metrics or scales, making aggregation complex and potentially unreliable.</p>	<p>The MMF does support a transparent process in which the selection of VCs is based on the Red River Métis values and perspectives. The selection of VCs must be accompanied by a process that also is co-developed by the MMF to evaluate impacts through the lens of the Red River Métis world view. Therefore, in contemplating the provision of direction to applicants on the selection of VCs, the MMF asserts that it is necessary to contemplate the entirety of the process that evaluates the implications of impacts to VCs as well.</p>
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			<p>Risk of Overshadowing Key Concerns: Broader VCs may overshadow critical impacts on specific groups or resources, leading to underrepresentation of certain interests (e.g., specific Indigenous cultural impacts may be minimized when nested under "Cultural and Spiritual Values").</p> <p>Difficulties in Mitigation and Monitoring: Broader VCs may complicate the identification of specific mitigation measures and monitoring strategies, as impacts on narrower VCs may not be as clearly delineated.</p>	
46	Subtopic 2: Environmental & Socioeconomic Assessment, Section 2.1 Valued component identification and selection for the ESA	K4, K5, K6, K7	<p>The CER's Filing Manuals rely on a VC-based approach to effects assessment. In recent hearings, the Commission has heard that the selection of VCs is a key initial decision that affects much of the applicant's ESA, and that input on the choice of VCs needs to be carefully considered. The Commission has heard that Indigenous Knowledge systems should be brought together with western knowledge systems to better understand project impacts.</p> <p>The MMF views positively CER's intention to include Red River Métis Knowledge in the selection of VCs, as it is an integral component to this process. Culturally appropriate methodology must, however, be used for the inclusion of this knowledge in VC selection.</p> <p>The CER is seeking for feedback on the following:</p> <ul style="list-style-type: none"> • How and to what extent Indigenous Knowledge should be addressed in the selection of VCs • What factors should guide the selection of VCs in terms of their breadth • Can VCs be "nested" to cover both specific and more general concerns (e.g., a general VC that sums the effects on a number of narrower VCs)? Are there any methodological considerations or approaches regarding the "summing" of effects of individual VCs? <p>Any other improvements to VC selections.</p>	<p>The Filing manuals must require that applicants engage meaningfully with the MMF and include Red River Métis Knowledge (where shared) in the selection of VCs. The VCs should then be co-selected with the MMF with the intention that selected VCs speak to the needs, values, rights, and interests of each group independently.</p> <p>Applicants must demonstrate Indigenous engagement by clearly stating all engagement activities in a formal report. Additionally, before the VC selection process is finalized, there should be a review conducted for the MMF to ensure that all culturally relevant VCs were retained and to avoid misinterpretation. This is an important component of meaningful engagement.</p>
47	Subtopic 2: Environmental & Socioeconomic Assessment, Section 2.2 Socio-economic valued components	K8, K9, K10, K11	<p>The CER Act requires the Commission to consider the health, social, and economic effects of projects. This is accomplished by analyzing, monitoring, and managing the intended and unintended social consequences, both positive and negative, of projects.</p> <p>The CER proposes a new consolidated "Rights and Interests of Indigenous Peoples" section (as explained in the Filing Manual – Rights and Interests of Indigenous Peoples Topic paper).</p>	See Recommendation 45



			Thus, VCs focused on the rights and interests would be consolidated within the new section, and the remaining socio-economic VCs would stay in the ESA section. The CER wants to clarify its guidance for assessing socio-economic effects.	
48	Subtopic 2: Environmental & Socioeconomic Assessment, Subtopic 2.3 Mitigation and Enhancement Measures	K12, K13, K14, K15, K16	<p>The CER's objective is to clarify guidance related to mitigation and enhancement measures. The Commission considers both adverse and positive effects in its assessment of proposed projects. This means that, in addition to mitigation measures that reduce adverse effects, enhancement measures for positive effects are also relevant.</p> <p>The CER is seeking feedback on the following:</p> <ul style="list-style-type: none"> • Considerations for enhancement and mitigation measures • Monitoring enhancement and mitigation measures 	<p>Enhancement and mitigation measures must take a distinctions and circumstance-based approach rather than a standardized approach. Recognizing that the rights, interests, and specific needs of each affected Indigenous group and the circumstance in which a project is situated can vary is important.</p> <p>The applicant must work with the MMF to identify appropriate mitigation and enhancement measures for each pipeline project.</p> <p>The applicant must also work with the MMF to ensure capacity funding for community-led monitoring of project impacts on selected VCs.</p>
49	Subtopic 2: Environmental & Socioeconomic Assessment, Subtopic 2.4 Cumulative Effects	K17, K18, K19, K20, K21	<p>The Filing Manuals specify that applicants conduct cumulative effects assessment and provide an overview of the methodologies used, i.e., how other relevant projects and activities were identified, and how the accumulation of effects was assessed.</p> <p>The CER's objective is to clarify filing guidance relative to cumulative effects assessment. The CER is seeking feedback on the following:</p> <ul style="list-style-type: none"> • Integration of climate change and extreme environmental events in cumulative effects assessment • How to identify appropriate baseline for cumulative effects assessment • Offsets and "no net loss" 	<p>Baseline for VCs selected should be determined in collaboration with the MMF and Red River Métis Citizens. The applicant should not determine that choosing a short timeframe to evaluate cumulative effects is sufficient without prior meaningful engagement with the MMF on this specific topic.</p>
50	Subtopic 2: Environmental & Socioeconomic Assessment, Section 2.5 Significance	K22, K23, K24	<p>In its assessment of proposed projects, the Commission broadly considers and balances the significance of positive and negative effects when determining whether a project is in the public interest. The CER Act does not, however, require an explicit determination of significance. The Filing Manuals currently describe a binary approach for determining project effects and cumulative effects. The Commission has evolved its approach to significance in recent hearings, however, by adopting a sliding scale for effects on VCs together with a modified set of criteria and ratings.</p> <p>The CER is considering:</p>	<p>The MMF suggests that the CER provide recommendations on how applicants can work with the MMF to develop a project-specific evaluation framework for determining the significance of impacts, a process which may include providing examples or templates that may be optionally adopted with mutual agreement by the MMF and applicant.</p>



			<ul style="list-style-type: none"> Including a templated framework, similar to the sliding scale and the criteria and ratings from the Commission's recent NEBC Recommendation Report, resulting in a sliding scale significance determination for each VC (see C26744-1 Appendix 7 and "Evaluation of Significance" tables for each VC in Chapters 7 and 8); and Requiring the applicant to consider whether IA Act section 82 applies with regard to federal lands, and if so, to provide their evaluation of whether the proposed project "is" or "is not" likely to cause significant adverse environmental effects on federal lands. <p>The MMF agrees that this is a step in the right direction, however, believes that it falls short in enabling the MMF to determine and articulate the significance of impacts. The MMF is similarly challenged in identifying global definitions for spatial or temporal impacts which may be context specific and therefore fall short in reflecting the needs of the MMF.</p>	
L. Filing Manuals – Lands Topic Paper				
51	Subtopic 1: Routing and site Selection Process	L1, L2	<p>The CER seeks to improve the clarity and specificity of the filing guidance regarding route and site selection, including documentation of the methodology used, and incorporation of input and perspectives from engagement with affected persons.</p> <p>The requirements in the filing manual pertain to proponent justification for routing and site selection in spite of engagement.</p>	<p>Compensatory accommodation must be provided where engagement results cannot be applied to the satisfaction of the landowner or steward. Expectation must be expanded beyond considering feedback: the compensation structure should be a separate matter for consultation and established based on prior land use and rights impacts.</p> <p>See Recommendation 53 below.</p>
52	Subtopic 2: Compensatory Methodology	L3, L4, L5	<p>The CER's objective for improvement is to gain an understanding of a company's compensation approach, such as its:</p> <ul style="list-style-type: none"> Compensation method Principles that it uses to structure compensation matters Best practices and approaches. <p>The CER is considering clarifying expectations for applicants to explain their compensation methodology and compensable matters.</p>	<p>Where land use disputes are before the Commissioner, any regulatory decision (on acquisition, construction, or other non-emergency situation) should be held until after the dispute is resolved.</p> <p>The MMF agrees that compensatory evaluations should be provided by the proponent in their applications. This should be informed by rights impacts and in consultation with the MMF.</p> <p>Where rights holders have a pre-determined framework for establishing compensation, this framework should be adopted by the CER to reinforce the sovereignty of rights holders.</p>



53	Subtopic 3: Location of Lands Required for the Project	L6, L7	<p>A description of the locations and rationale for using lands necessary for the project allows the Commission to assess whether the identified lands are appropriate for use. Currently, the Filing Manual specifies that information regarding the location of land includes:</p> <ul style="list-style-type: none"> • A general description of the location of the lands that are proposed to be used for the project, including maps and location coordinates • A description of the nature and relative proportions of land ownership types along the proposed route (i.e., freehold, federal or provincial Crown, public lands, or other). <p>The CER is considering clarifying expectations for applicants to provide more detailed information on lands specifically obtained for permanent, temporary, and/or crossing uses.</p> <p>While land assessment is important, there are important shortcomings to the current CER approach: land use does not include rights-based use by the Red River Métis.</p>	<p>The proportion of land use for rights-based practice should be incorporated in the guidance. This would be part of the “description of the nature and relative proportions.”</p> <p>To this end, the MMF must be afforded appropriate capacity to collect, process, and/or share Red River Métis Knowledge and land use information in advance of completing this requirement.</p>
54	Subtopic 4: Land Rights Subtopic 6: Land Acquisition Process Subtopic 7: Land Acquisition notices and Agreements	L8, L9, L12, L13, L14, L15, L16	<p>The CER is considering clarifying that applicants should describe the land rights required for permanent, temporary, or crossing uses.</p> <p>Land rights are considered to be acquisition or lease of lands for the construction, operation, and maintenance of its facilities. This considers whether land belongs to a private owner, the Crown, and whether or not land use is permanent or temporary.</p> <p>This update is to include rights holders and land users in matters of land acquisition and compensation.</p> <p>The CER is considering adding specificity to its guidance regarding details on the overall land acquisition process, including a description of the process to use if applicants are unable to reach agreements on land rights with the rights holder, owner and user of lands, and utility owners.</p> <p>The CER is also proposing that proponents must stipulate that land acquisition agreement includes terms allowing land access for Traditional Land Use and Traditional Ecological Knowledge studies.</p>	<p>The MMF agrees that right holders and land users must be engaged in the land acquisition process and full details must be provided to those land users. For information and transparency, CER requirements should be contained within a CER document. The proponent should be mandated to provide the CER-derived description of the land acquisition. The CER must produce a document that fulfils the filing manual requirements for information, including: expectation from proponents, the consultation process, and dispute resolution mechanisms.</p> <p>If a framework for compensation has been developed by rights-holders this should be included in the application project description.</p> <p>The MMF agrees that Red River Métis Knowledge and land use studies should be used where shared by the MMF to inform land acquisition agreements, however, the MMF must be afforded appropriate capacity to collect, process, and/or share Red River Métis Knowledge and land use information in advance of completing this requirement.</p>



55	Subtopic 5 Rights Holder, Owners and Users of Lands	L10, L11	<p>The CER is considering specifying that applicants should provide a more detailed description of those directly impacted by a project. The CER seeks to clarify its guidance for applicants to describe the rights holders, owners, and users of lands so that the Commission is informed of the landowners and users directly impacted by the project.</p> <p>The MMF is aligned with improved clarity around Red River Métis Rights, claims, interests, frameworks, and land use.</p>	<p>MMF-specific information would be available to the proponent through a Red River Métis Knowledge and land use study. This study would be integrated into the proponent's application. It is also important that such studies are guided by a specific framework, such as a bilateral lifecycle agreement between the MMF and the proponent.</p> <p>The MMF must be afforded appropriate capacity to collect, process, and/or share Red River Métis Knowledge and land use information in advance of completing this requirement.</p>
M. Filing Manuals – Rights and Interests of Indigenous Peoples Topic Paper				
56	General comment	n/a	<p>The term "Rights and interests of Indigenous Peoples" is used throughout this filing document. This term does not allow for a distinctions-based approach: it groups the Red River Métis into a pan-Indigenous catchall category, which does not allow for the recognition of the distinctive rights, claims, interests, and treaties of the Red River Métis.</p>	<p>All filing manual and topic papers should use language that is rooted in a distinctions-based approach to engagement and consultation. The MMF does not accept Pan-Indigenous approaches that are unable to reflect the unique perspectives, needs and values of the Red River Métis.</p>
57	Subtopic 1: Restructuring the Filing Manual	M1, M2	<p>The CER objective to improve the ESA in obtaining more information on potential effects on the rights and interests of Indigenous Peoples (and at the same time the readability and clarity of the ESA) is proposed to be achieved by creating a new section, Rights and Interests of Indigenous Peoples. The section would consolidate guidance from throughout the ESA and provide general statements to address the topics when necessary. This would include the proponent's consideration of engagement results, inclusion of Indigenous Knowledge, and climate change resiliency.</p> <p>See Comment 53</p>	<p>See Recommendation 53 above.</p>
58	Subtopic 2: Rights and Interests of Indigenous Peoples, Section 2.1 Valued components focused on the rights and interests of Indigenous Peoples	M4, M5, M6, M7, M8	<p>The CER mentions that it is committed to advancing reconciliation with Indigenous Peoples and the implementation of the United Nations Declaration on the Rights of Indigenous Peoples Act, including the supporting Action Plan, most specifically Action Plan Measure 34 (APM 34). In support of these commitments, the CER has identified reconciliation as a strategic priority, issued a statement on reconciliation, and is continuing to find ways to implement the United Nations declaration in its work.</p>	<p>The CER must take an approach that recognizes the need for reconciliation and interpretation of UNDRIP obligations as they relate to the CER process to occur through a lens of self-governance and self-determination. As a result, it is important that effort be put to ensuring frameworks and guidance exist for the CER, Proponents, and the MMF to define their relationship through the life of a project, evolving with the needs of each party.</p> <p>The MMF finds it unacceptable for the CER to maintain a paternalistic approach to determining appropriate levels of</p>



			The CER's objective is to clarify guidance relating to rights and interests of Indigenous Peoples.	involvement of the MMF in projects, which varies from project to project. The MMF therefore must be positioned to self-determine participation holistically through the life of a project sitting as an equal party to the CER and Proponent.
59	Subtopic 2: Rights and Interests of Indigenous Peoples, Section 2.2 Integrating the applicant's assessment and Indigenous-led assessments and studies	M9, M10, M11, M12	<p>The MMF appreciates that the CER recognizes the potential benefits associated with Indigenous-led assessments and studies.</p> <p>The CER wants to be more explicit about how and when applicants are expected to support Indigenous-led assessments and studies where Indigenous communities wish to do so, and how to integrate the results of Indigenous-led assessments and studies into their own assessments.</p> <p>The CER is seeking input on the following:</p> <ul style="list-style-type: none"> • Opportunities and challenges of Indigenous-led assessments and studies • How to integrate Indigenous-led assessments and studies with the applicant's assessment without duplicating efforts <p>Timeline issues for integration of Indigenous-led assessments and studies (CER-legislated time limit of 450 days for certificate applications).</p>	<p>To address these challenges, applicants and the CER must commit to developing a longstanding relationship with the MMF ensuring capacity can be built and maintained for community-led assessments and studies that have a wider scope (e.g., studies that inform future projects, and that are not necessarily project-specific).</p> <p>In instances where legislative timelines fundamentally conflict with the needs of an Indigenous-led assessment or decision-making process, it serves a signal that the legislated timeline is not in alignment with the needs of the community and therefore fall short in realizing efforts to work towards reconciliation. Therefore, it should serve as a strong indicator that the legislated timeline may need to be evaluated and reconsidered.</p>
60	Subtopic 2: Rights and Interests of Indigenous Peoples, Section 2.3 Clarifying the CER's guidance for assessing effects on the rights of Indigenous Peoples	M13, M14, M15, M16, M17, M18	<p>The CER Act requires the Commission to consider "the effects [of the project] on the rights of the Indigenous Peoples of Canada recognized and affirmed by section 35 of the Constitution Act, 1982" (paragraph 183(2)[e]). The Filing Manuals provide guidance for applicants to follow when assessing project effects on the rights of Indigenous Peoples.</p> <p>When following this guidance, applicants are expected to engage with potentially impacted Indigenous communities as soon as is practicable in the project's development in order to allow adequate time to discuss and be aware of each community's understandings, practices, and assertions related to their rights. The CER wants to modify and clarify its expectations of applicants regarding assessment of the effects of a project on the rights of Indigenous Peoples to support a robust interpretation of Indigenous rights by:</p> <ul style="list-style-type: none"> • Integrating a new "Rights and Interests of Indigenous Peoples" section • Including a templated framework for applicants to follow 	<p>The CER mentions that "Where there may be any residual effects, after mitigation measures are implemented and that are related to the project, describe the nature and extent of these, including their contribution to any potential cumulative effects." However, appropriate compensation measures, determined in collaboration with the concerned community, must be implemented when there are residual effects. This is a core tenant of the principles of meaningful accommodation. The MMF recognizes that there are instances where meaningful consultation leads to a project that does not completely avoid or mitigate impacts. The MMF does not at face value see this as an absolute barrier to advancing a project, however, the process in which the Crown fulfills its resultant duty to accommodate must be transparent, equitable, and tangible.</p> <p>The CER also mentions that the templated framework will apply the sliding scale and criteria and ratings from <i>The Crown Consultation and Accommodation Report</i> for the NorthRiver Midstream NEBC Connector Project to determine the severity of the effects on the rights and interests of Indigenous Peoples. It is important here to consider that the degree of severity of the</p>



				effects on the rights, claims, and interests of the Red River Métis is often determined by the applicant/proponent hired firms and thus minimized. The degree of severity should thus be determined collaboratively with the MMF. Further, universal frameworks must be approached with caution as they can fail to contemplate situation-specific needs, including those which are unique to the Red River Métis.
61	Subtopic 2: Rights and Interests of Indigenous Peoples, Section 2.4 Clarifying the CER's guidance for monitoring and oversight by Indigenous Peoples	M19, M20, M21	<p>The CER wants to modify and clarify its expectations of applicants regarding monitoring and oversight by Indigenous Peoples during construction and operation to support a robust assessment of a project's potential effects on the rights and interests of Indigenous Peoples.</p> <p>The CER is considering clarifying expectations for applicants about monitoring and oversight by Indigenous Peoples that can form part of an assessment (e.g., plans for participation of Indigenous Peoples in construction monitoring, plans for participation of Indigenous Peoples in post-construction and operations monitoring).</p>	The MMF supports the CER's initiatives to clarify expectations of applicants regarding monitoring and oversight by Indigenous Peoples during construction, however, the MMF cautions the CER to avoid a "one size fits all" approach that assumes the needs of all projects will be equal. Further, the MMF is concerned that the CER in setting this expectation or applicants in acting on this expectation may utilize Pan-Indigenous efforts to satisfy these needs. The MMF believes that in setting this expectation the CER must be in a position to evaluate situations and direct proponents to satisfy the unique needs of each affected group as they are identified with respect to Indigenous participation through the lifecycle of a project.
62	Subtopic 2: Rights and Interests of Indigenous Peoples, Section 2.5 Clarifying the CER's guidance for Sites of Indigenous significance	M22, M23, M24	<p>The CER wants to modify and clarify its expectations of applicants regarding heritage and cultural resources, which could include sites of Indigenous significance during construction and operation to support a robust assessment of a project's potential effects on the rights and interests of Indigenous Peoples.</p> <p>The CER is considering clarifying expectations for applicants about sites of Indigenous significance, heritage resources, and traditional land and resource use that can form part of an assessment.</p>	See Comment 61 above.

